



CALIFORNIANA
REFERENCE DEPARTMENT



SAN FRANCISCO PUBLIC LIBRARY



3 1223 90155 5087

BOOK NO.

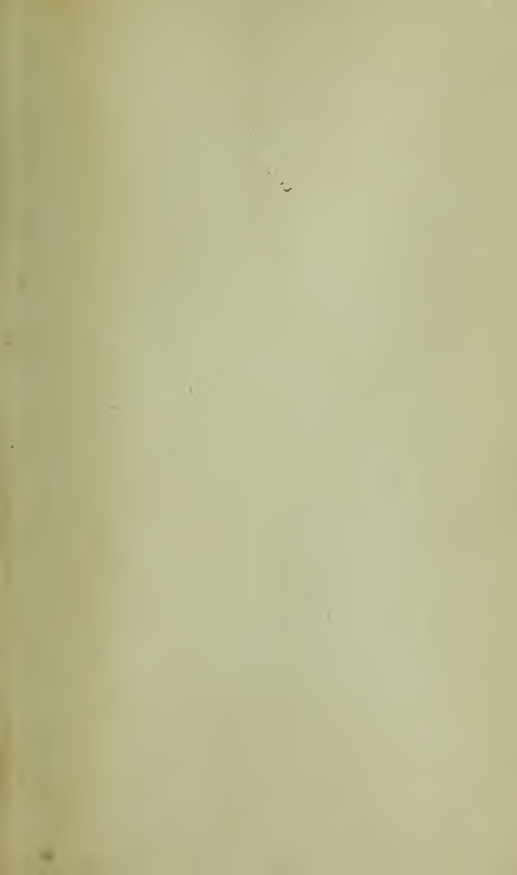
ACCESSION

917.941 D775

600606

NOT TO BE TAKEN FROM THE LIBRARY

Form 3427—5000—1-48



HISTORY

OF THE

Pious Fund of California

BY

JOHN T. DOYLE.

[FROM PAPERS OF THE CALIFORNIA HISTORICAL SOCIETY.]

SAN FRANCISCO:

BOSQUI ENGRAVING & PRINTING CO.

1887.

x 917.941

J775

600606

HISTORY OF THE "PIOUS FUND" OF CALIFORNIA.

From the time of the discovery of California, in 1534, by the expedition fitted out by Cortez, the colonization of that country and the conversion of its inhabitants to the Catholic faith was a cherished object with the Spanish Monarchs. Many expeditions for the purpose were set on foot, at the expense of the Crown, during the century and a half succeeding the discovery, but though attended with enormous expense, none of them was productive of the slightest result. Down to the year 1697 the Spanish Monarchs had failed to acquire any permanent foot-hold in the vast territory, which they claimed, under the name of California.

The success of the Jesuit fathers in their missions on the northwestern frontier of Mexico, and elsewhere, induced the Spanish Government as early as 1643, (when fitting out an expedition for California under Admiral Pedro Portal de Casanate) to invite that religious order to take charge of the spiritual administration of it, and the country for which it was destined; and they accepted the charge; but that expedition like all its predecessors failed.

The last expedition undertaken by the Crown was equipped in pursuance of a royal cedula of December 29, 1679. It was confided to the command of Admiral Isidro Otondo, and the spiritual administration of the country was again entrusted to the Jesuits, the celebrated Father Kino being appointed *Cosmografo Mayor* of the expedition. Various circumstances conspired to delay its departure, and it only sailed on the 18th of March, 1683. Many precautions had been taken to ensure its success, but after three years of ineffectual effort and an expenditure of over 225,000 dollars, it was also abandoned as a failure, and at a *junta general*, assembled in the city of

Mexico, under the auspices of the Viceroy, wherein the whole subject was carefully reviewed, it was determined that "the reduction of California, by the means theretofore relied on, was a simple impossibility," and that the only mode of accomplishing it was to invite the Jesuits to undertake its whole charge, at the expense of the Crown. This proposition was made; but it would seem that the conduct of the royal officers, civil and military, must have contributed to the previous failures, and probably for that reason, it was declined by the society; although the services of its members as missionaries, were always freely placed at the disposal of the Government.

Individual members of the Society, however, animated by a zeal for the spread of the Christian faith in California, proposed to undertake the whole charge of the conversion of the country and its reduction to Christianity and civilization, and without expense to the Crown, on condition that they might themselves select the civil and military officers to be employed. This plan was finally agreed to, and on the 5th of February, 1697, the necessary authority was conferred on Fathers Juan Maria Salvatierra and Francisco Eusebio Kino, to undertake the reduction of California, on the express conditions: 1. That possession of the country was to be taken in the name of the Spanish Crown, and 2. That the royal treasury was not to be called on for any of the expenses of the enterprise.

In anticipation of this result, Fathers Kino and Salvatierra had already solicited and received from various individuals and religious bodies, voluntary donations, contributed in aid of the enterprise. The funds thus collected were placed in their hands, in trust, to be applied to the propogation of the Catholic faith in California, by preaching, the administration of the sacraments of the church, erection of church edifices, the founding of religious schools, and the like; in a word, by the institution of Catholic missions there, under the system so successfully pursued by the Jesuits, in Paraguay, Northern Mexico, Canada, India, and elsewhere.

At a time when California is coming into the enjoyment of the benefactions of more modern philanthropists, and we are

paying honor to the still living and recently deceased benefactors of our State, it is not unfitting to give the names of the earliest and most important contributors to the fund, on which the conquest of California and its reclamation from the dominion of the savage were founded. They were Don Alonzo Davalos, Conde de Miravalles, and Don Mateo Fernandez de la Cruz, Marquez de Buena Vista, who gave one thousand dollars each. By their example others were induced to subscribe, and, in a short time, fifteen thousand dollars more were made up, 5,000 in cash and 10,000 in promises. Don Pedro Gil de la Sierpe, treasurer of Acapulco, offered the use of a galliot to transport the missionaries to their destination, and the gift of a small boat or launch. Considering the remoteness and isolation of the field, it was determined to establish a separate special fund or capital, the income from which should form a permanent endowment for the missionary church. Towards this latter object the first recorded contributions seem to have been by the congregation of N. S. de los Dolores, of the city of Mexico, which contributed \$10,000, and Don Juan Caballero y Ozio, who donated \$20,000 more, besides giving Father Salvatierra the comforting assurance, that in any unforeseen emergency, he might draw on him for whatever money he needed, and he would honor his drafts, large or small.

This endowment fund, commenced by the pious liberality of the society and the individual just named, was increased by subsequent donations. The capital was invested as securely as possible, and as an income of five hundred dollars, per annum, was deemed necessary for each mission, and five per cent, was the then current rate, on safe investments, a capital of ten thousand dollars was made the basis of each new mission founded.

I suppose it soon became the correct thing for a wealthy Mexican to found a mission in California; and as the founder was allowed the privilege of having it called by a name of his own selection, gentlemen, so disposed, had the satisfaction of recording their preferences. It seems to me I have seen some-

thing, that my scientific friends would probably call a survival of this notion, in modern fairs for charitable or religious purposes, where a sword is voted to a favorite soldier, or a walking cane to a popular clergyman, a contribution of some small sum constituting the title to a vote.

In this way the following missions were founded in the peninsula. I give the names of the contributors and the dates of foundation opposite each :

No.	Date.	Name of Mission.	Founder.
1.	1698.	Our Lady of Loretto.....	D. Juan Caballero y Ozio.
2.	1698.	St. Francis Xavier.....	D. Juan Caballero y Ozio.
3.	1700.	Santa Rosalia [Mulexe].....	D. Nicholas de Arteaga.
4.	1701.	Los Dolores.....	Congregation of that Name in Mexico.
5.	1704.	San Jose [Commundu].....	Marques de Villa Puente.
6.	1709.	N. S. de Guadalupe.....	Marques de Villa Puente.
7.	1713.	La Purisima Concepcion.....	Marques de Villa Puente.
8.	1718.	San Luis.....	Don Luis Velasco.
9.	1719.	Santiago.....	Don Luis Velasco.
10.	1725.	San Ignacio.....	Padre Juan Luyando.
11.	1730.	San Jose del Cabo.....	Marques de Villa Puente.
12.	1731.	Santa Rosa.....	Dona Rosa de la Peña.
13.	1757.	San Francisco de Borja.....	Duchess of Gandia.

These sums of money forming a considerable capital, held on investment, received, by common consent, the name of "The pious fund of the Missions of California," or, more briefly, the "*Pious Fund of California*."

In the first half of the last century there was living in Mexico a gentleman of great wealth and large ideas, whose name has already been mentioned; the Marques de Villa Puente. His wife, the Marchoness de las Torres de Rada, was also possessed of great wealth, and she entirely shared the sentiments of her husband. He was a patriot as well as a man of sincere and earnest piety, and as he was probably the most munificent patron of the Pious Fund, it is fitting some account should be given of him. I translate from Alegre's History of the Society of Jesus in New Spain the following notice of him, under the date of 1739.

"The chronicle of events in California for this year would be incomplete if we failed to mention the irreparable loss,

" which that country sustained, of its most distinguished benefactor, the illustrious José de la Puente, Peña y Castrejon, Marquis of Villa Puente, who might indeed with propriety be termed the fountain and treasury of kindness to our whole society and to the Christian world. It may with truth be said of him, that there was in his day, no pious enterprise, to which he failed to contribute, thanking the Almighty for every opportunity of doing good to the poor. It was also specially the rule of his conduct, in contributing to relieve their temporal wants, never to forget the spiritual comfort of their souls. By this means he became in his lifetime, and remains to this day, the apostle of many people and nations, which the establishments and missions founded by him daily redeem from the darkness of infidelity and sin. In Africa, besides remitting at various times large sums of money for the ransom of Christian captives, he founded, in Algiers, an hospital under the care of the Franciscan Friars, for their succor and spiritual comfort. In Asia, at great expense, he succeeded in alleviating the vexatious annoyances to which, in the kingdoms of China and Japan, innumerable Christians were continually subjected for the faith of Jesus Christ. For the support of missionaries and catechists, and the building of churches in those countries, he sent on different occasions more than \$100,000. In Macao he founded a house or cradle of mercy, for the rescue of foundlings, who, according to the barbarous custom there prevailing, among the poor, are daily found exposed in the streets. For the same purpose of supporting ministers and catechists, he remitted enormous sums to the Kingdoms of Travancor, Ternate, Madure and Coromandel, thus supporting those flourishing churches, which but for such timely succor were in frequent danger of being overwhelmed by the continued hostilities of those pagans. In the Philipines he founded a Presidio of *Boholan* Indians as a protection against the attacks of the Mahomedans, which prevented the spread of the gospel. He built in the East Indies the Church of Pondicheri, and remitted to Jerusalem large sums of money for

" the ornament of the holy places, and the security of pious
" pilgrims.

" In America, besides continued daily alms to the afflicted
" and poor, numerous dowries bestowed on virtuous maidens,
" chapels and pious works of the same nature, and others
" less costly, he expended over \$80,000 in building the con-
" vent of St. Joseph of the barefooted Franciscan friars, at
" Tacubaya, and over \$200,000 in missions, vessels, and other
" necessities of California. He founded in Pimeria (Arizona)
" the two missions of *Busonic* and *Souoydad*, changing the
" name of San Marcelo, by which the latter was formerly
" known, to that of San Miguel, from devotion to the latter
" Saint. He contributed \$10,000 towards the founding of the
" college of Caracas, and \$10,000 more to that of Havana,
" and another \$10,000 towards founding a house of religious
" exercises in Mexico. The Missions of *Nayarit* of *Moqui*
" and New Mexico were not a little indebted for his support.
" In Europe he defrayed the whole expenses of the investiga-
" tions preceding the beatification of the venerable Father
" Luis de la Puente ; he re-built and re-endowed the college
" of Santander ; built and endowed the college and church of
" the cave of Manresa—the scene of the penance of our Fa-
" ther St. Ignatius, and the cradle of the Society. He laid
" the foundation of a college of missionaries at the house and
" castle of Xavier, in the kingdom of Navarre ; served his
" Majesty, Philip V, with a regiment of five hundred and
" seventy men, armed and maintained at his own expense, for
" nearly a year and a half, in acknowledgement of which ser-
" vice his Majesty offered him the vice-royalty of Mexico, an
" honor which he declined, preferring to all other things, the
" tranquility of his own conscience.

" In his extreme old age, he made a pilgrimage to the house
" of Nazareth, and the city of Loretto, clad in a garment of
" coarse cloth, and under a vow not to shave his beard, until
" he had offered up his devotions at that sacred place. There
" he made most munificent offerings to the Holy Virgin.
" Throughout his journey he distributed profuse alms. He

"went then to Rome, and in the college Jesu, went through
"the religious exercises of our Father, St. Ignatius. He re-
"turned to Spain, offered, in Zaragossa, most costly gifts at
"the church and image *del Pilar*, and sought hospitality in
"our imperial college at Madrid where, having three days be-
"fore given away, in alms, all the rest of his property, even
"down to his cloak, he finally gave himself to the Lord, by
"seeking to be admitted into the Society. Having made his
"vows with tenderness and devotion, to the edification of the
"whole court, he died on the 13th day of February. 1739."

A copy of the Marquis' deed of the vast estates conveyed by him for the use of the Pious Fund I have and will deposit with our secretary for the delectation and edification of all who take an interest in the exact form of such things. As a specimen of conveyancing it will astonish a lawyer brought up under modern methods, and yet it is no more prolix than almost any modern marriage settlement, such as they are constantly executing to-day in England. Another instance of survival, though in my humble judgment not "of the fittest."

The next important contribution to the pious fund after that of the Marquis was, I believe, made by the Duchess of Gandia. I have never obtained a copy of her will, but its provisions are to be inferred from the brief notice of it, in Clavigero's California. He said that the good lady, having heard an aged domestic, who had served as a soldier in California, recount the sterility of that country, the wretched condition of the Indians there, the hardships and apostolic labors of the missionaries, etc., concluded that she could do nothing more pleasing to God than to devote a portion of her wealth to the support of these missions, and she therefore directed in her will that the capital set aside to provide annuities for her servants should, as the life estates fell in, go to the missions of California. He adds that the sums obtained by the missions from this legacy had amounted in 1767, to \$60,000, with as much more to come in on the termination of the remaining life estates.

On May 29, 1765, Dona Josepha Paula de Arguelles, a wealthy lady of Guadalajara, executed her will, by which she bequeathed, after other provisions, one-fourth of her residuary estate to the Jesuit College of St. Thomas Aquinas, in Guadalajara, and the other three-quarters to the "Missions in China¹ and New Spain." She died about a year and a half thereafter. The Jesuits at that time, pressed by a storm of obloquy in Spain and Portugal, renounced under the will, and the heirs of the deceased lady brought an action to have her declared intestate as to all her property, except a trivial legacy. By the time the action was tried, the Jesuits, in whose hands at the time of the making of the will the Mexican and Philippine missions were, had been expelled from all the Spanish dominions and all their property seized by the Crown.

The crown accordingly intervened in the action just mentioned, claiming on behalf of the missions. The Monarch as "*Parens Patriae*" recognized the fiduciary character of the bequest, and as the former trustee had been put out of existence, claimed to succeed to the duties, and consequent rights of that position. The litigation was long and arduous, and went finally before the council of the Indies, on appeal from the *Audencia real* of Mexico. I have a copy of the judgment. By it the Decedent is declared intestate, as to the quarter of her property bequeathed to the College, the beneficiaries having renounced as above mentioned; but as to the three-fourths bequeathed to the Missions, the bequest was sustained, and the money placed at the disposal of the Crown, for the fulfillment of the trusts. One-half of these three-fourths was therefore aggregated to the Pious Fund, and the other half was devoted to Missions in the Philippine Islands. The amount of the contribution was about \$240,000. I have not been able to trace any other very large contributions to the Pious Fund, or I would gladly chronicle the names of the donors. There were probably many contributions of important and many more of moderate amounts. The contributors, how-

¹ China was then deemed to include the Philippine Islands.

ever have fallen into oblivion like the "mute inglorious Miltons" we have heard of.

To return to the enterprise of Fathers Kino and Salvatierra, we find associated with them in the projected conquest Fathers Juan Ugarte and Francisco Maria Piccolo. The former of these was, it seems, possessed of decided financial and administrative ability; he was a most zealous missionary, and his great stature and herculean personal strength, inspired the Indians with a corresponding respect for his doctrine and preaching. Another instance of the truth of the proverb—"La raison du plus fort," &c. Some droll stories are told of him in this connection; but this is not the place for them. He was not long suffered to remain in personal charge of a Mission, but was transferred to the position of procurator, or financial agent of the missionary establishments, at the City of Mexico, where his financial ability was exercised in the care, investment, and disbursement of the funds. Father Piccolo was a scion of a noble Italian family; a scholarly man, and master of an elegant and perspicuous style, as his letters from California—some of which are printed in the "Collection des lettres Edifiantes at Curieuses"—show.

Father Kino was unable to accompany his associates to the scene of their labors, and the mission was commenced by Fathers Salvatierra and Piccolo, who were subsequently joined by Father Ugarte. It would not be out of place here to follow these heroic men in their apostolic labors. Father Salvatierra embarked at the mouth of the Yaqui River, in a crazy little schooner, and after what was deemed a short voyage of nine days reached California. Landing in an unknown country, remote from all supplies and communications, the intrepid missionary, accompanied by a corporal and five men,¹ with three Indian servants, deliberately aimed at no less an

¹ Venegas gives the muster-roll of the "*armada*." Their names, and additions were as follows: Don Luis de Torres Tortolero, Commander-in-Chief; Esteban Rodriguez Lorenzo, a Portuguese, and afterwards, for many years, Captain of the Presidio; Bartolomeo de Robles Figueroa, a creole of Guadalaxara; Jesus Caravana, a Maltese sailor; Nicolas Marquez, a Sicilian sailor; and a mulatto, named Juan. Vol. II, p. 17.

object than the spiritual conquest of the whole peninsula, and the country to the north of it, up the coast as far as Cape Mendocino. He was followed in a few weeks by Father Piccolo. The chronicle of the obstacles they surmounted, the privations, sufferings, and perils to which they and their subsequent companions were exposed, and in which some of them cheerfully perished, and of the success they finally achieved, is as full of romance, interest and instruction as any in the annals of the New World. Besides the chief object of bringing the native population into the fold of the church, which was ever kept steadily in view, the Jesuit Fathers never lost sight of the interests of learning and science; they faithfully observed and chronicled all that was of interest, in any branch of human knowledge, or capable of being useful to the colony or the mother country. It is a hundred and twenty years since the Jesuits were expelled from Lower California, yet to this day, most of what we know of the geography, climate, physical peculiarities and natural history of the peninsula is derived from the relations of these early missionaries. By kindness and instruction they gradually overcame the hostility of the native tribes and during the seventy succeeding years gradually extended their missions from Cape San Lucas up the peninsula, to the northward, so that at the period of their expulsion they had established those already mentioned, and these, with that of San Fernando de Villacata, founded by the Franciscans in May, 1769, on their march to San Diego, were all the missions of Lower California.

At this time the interior of Upper California was unexplored and its eastern and northern boundaries uncertain. The outline of the coast had been mapped with more or less accuracy, by naval exploring expeditions fitted out by the Crown, and by the commanders or Pilots of the Philippine galleons, which, on their return voyages to Acapulco, took a wide sweep to the north, and sighted the leading headlands, from as far north as The "Cabo Blanco de San Sebastian," down to Cape San Lucas. The whole coast, as far north as

Spain claimed, was called by the name of California. The terms Upper and Lower California came into use afterwards.

The "Pious Fund" continued to be managed by the Jesuits, and its income applied according to the will of its founders, and the Missions of California remained under their charge down to 1768, in which year they were expelled from Mexico in pursuance of the order of the Crown, or Pragmatic sanction, of April 2, 1767. Their missions in California were directed by the Viceroy to be placed in charge of the Franciscan order. Subsequently a Royal Gedula of April 8, 1770, was issued, directing that one-half of these missions should be confided to the Dominican Friars; in pursuance of which, and a "Concordato" of April 7, 1772, between the authorities of the two Orders, sanctioned by the Viceroy, the Missions of Lower California were confided to the Dominicans, and those of Upper California to the Franciscans. The income and product of the "Pious Fund" was thereafter appropriated to the missions of both Orders.

The Church, when first established in Upper California, was purely missionary in its character. Its foundation dates from the year 1769; in July of which year, Father Junipero Serra, a Franciscan Friar, and his companions, reached the port of San Diego, overland, from the frontier Mission of Lower California, and there founded the first Christian Mission, and first settlement of civilized men, within the Territory now comprised in the State of California. Their object was to convert to Christianity and civilize the wretched native inhabitants, sunk in the lowest depths of ignorance and barbarism. In pursuit of this they exposed themselves to all perils and privations of a journey of forty-five days across an unexplored wilderness, and a residence remote from all the conveniences and necessities of civilized life, in the midst of a hostile and barbarous population. Father Junipero and his followers established missions among these people, from San Diego as far north as Sonoma, at each of which the neighboring tribes of Indians were assembled and instructed in the truths of the Christian religion and the rudiments of

the arts of civilized life. The missions of Upper California, and the dates of their foundation, were as follows :

San Diego, 1769.	Santa Barbara, 1786.
El Carmelo, 1770.	La Purisima, 1787.
San Gabriel, 1771.	La Soledad, 1791.
San Antonio, 1771.	Santa Cruz, 1791.
San Fernando, 1771.	San Juan Bautista, 1797.
San Luis Obispo, 1772.	San Jose, 1797.
San Francisco de Assis, 1776.	San Miguel, 1797.
San Juan Capistrano, 1776.	San Luis Rey, 1798.
Santa Clara, 1777.	Santa Ynez, 1802.
San Buenaventura, 1782.	San Rafael, 1817.
San Francisco, Solano, 1823.	

The missions were designed, when the population should be sufficiently instructed, to be converted into parish churches and maintained as such, as had already been done in other parts of the Viceroyalty of New Spain ; but in the meantime, and while their missionary character continued, they were under the ecclesiastical government of a President of the Missions. Father Serra was the first who occupied this office, and the missions were governed and directed by him and his successors, as such, down to the year 1836.

The decree or pragmatic sanction expelling the Jesuits from the Spanish dominions directs the seizure into the hands of the Crown of all their temporalities.¹ Under this provision, the Crown took all the estates of the Order into its possession, including those of the "Pious Fund;" but these latter, constituting a trust estate, were of course taken *cum onere*, and charged with the trust. This was fully recognized by the Crown, and the properties of the "Pious Fund," so held in trust, were thereafter managed in its name by officers appointed for the purpose, called a "*junta directiva*." The income and product continued to be devoted, through the instrumentality of the ecclesiastical authorities, to the religious uses for which they were dedicated by the donors.

¹ Nov. Recop., Vol. 1, p. 183.

On the declaration of Mexican independence, Mexico succeeded to the Crown of Spain as trustee of the "Pious Fund," and it continued to be managed, and its income applied as before, down to September 19, 1836, when the condition of the church, and of the missionary establishments in California, seemed to render desirable the erection of the country into a diocese or bishopric and the selection of a bishop for its government. In compliance with the known rule of the Holy See not to consent to the erection of new bishoprics in countries acknowledging the Catholic faith, without an endowment adequate to the decent support of the bishopric, the law of the Mexican Congress of September 19, 1836, was passed, which attached an endowment of \$6,000 per year to the mitre to be founded, and conceded to the incumbent when selected, and his successors, the administration and disposal of the "Pious Fund."

In pursuance of the invitation held out in this enactment, the two Californias, Upper and Lower, were erected by his Holiness, Pope Gregory XVI, into an episcopal diocese, and Francisco Garcia Diego, who had until that time been President of the missions of Upper California, was made bishop of the newly constituted See ; as such he took upon himself the administration, management and investment of the "Pious Fund" as trustee, as well as to the application of its income and proceeds to the purposes of its foundation, and for the benefit of his flock.

On February 8, 1842, so much of the law of September 19, 1836, as confided the management, investment, etc., of the fund to the bishop, was abrogated by a decree of Santa Ana, then President of the Republic, and the trust was again devolved on the State ; but that decree did not purport in any way to impair or alter the destination of the fund ; it merely devolved on government officers the investment and management of the property belonging to it, for the purpose of carrying out the trust established by its donors and founders.

On October 24th, 1842, another decree was made by the same authority, reciting the inconvenience and waste and ex-

pense attending the management of the various properties belonging to the "Pious Fund," through the medium of public officers, and thereupon directing that the property belonging to it should be sold for the sum represented by its income (capitalized on the basis of six per cent. per annum), that the proceeds of the sale as well as the cash investments of the fund should be paid into the public treasury, and recognized an obligation on the part of the government to pay six per cent. per annum on the capital thereof thenceforth.

The property of the "Pious Fund" at the time of that decree of October 24, 1842, consisted of real estate, urban and rural; monies invested on mortgage and other security, and the like. The greater part of the property was sold, in pursuance of the last mentioned decree, for a sum of about two millions of dollars. The names of the purchasers are stated by Mr. Duflot de Mofras, in his "*Exploration du Territoire de l'Oregon et de la Californie*," to have been the house of Saraio and Messrs. Rubio Bros.; but notwithstanding the solicitude for the welfare of the Church and the advancement of the missionary cause so clearly expressed by the President, in the recital of motives, &c., which precedes his decree, such was the disposition to detraction then prevalent in the Mexican metropolis, that there was not wanting people mean and jealous enough to insinuate that the President himself had what is popularly called an underground interest in the purchase.

Besides the property real and personal belonging to the fund, it was a creditor to the State in amounts aggregating over a million and a quarter of dollars. For with all their enormous wealth, the Spanish monarchs were from time to time excessively impecunious, and the power to use trust funds without immediate accountability sometimes led them, as it has led many another man before and since, to misappropriation; and so they occasionally would put their hands into the treasury of the Pious Fund and abstract some of the cash. "How oft the sight of means to do ill deeds, makes deeds ill done?" Such, however, is the punctiliousness of the Castilian character, that for whatever sums he borrowed, the king al-

ways insisted, like Micawber, on giving his note of hand. I have a memorandum of the dates and amounts of these, but they are not really interesting. Mexico having become independent of Spain, with a sense of honour creditable to the men who then controlled her destiny, made haste to recognize her obligation for so much of the public debt of Spain as belonged to the Viceroyalty, and in the treaty of peace between the mother country and the emancipated colony, concluded December 29, 1836, this acknowledgment—already solemnly pronounced by the law of June 28, 1824,—was formally repeated.

Perhaps it will surprise some of my hearers to learn that the payment of the interest on the capital of the fund was not always punctually made by the Government of Mexico. In fact, it was sadly neglected, and although on a very few occasions some small payments were made on account—by orders on the Custom House—sometimes even countermanded before they took effect—yet these were so insignificant as to become what the mathematicians term a negligeeable quantity. Mexico, however, like Spain, always insisted on honestly giving her note for what she borrowed ; it is charitable, therefore, to assume that her poverty, and not her will, consented to its non-payment.

At the time of the seizure of the "Pious Fund" by Santa Ana, the agent and attorney in fact of Bishop Diego, in the city of Mexico, was a venerable old gentleman called Don Pedro Ramirez. His probity of character, blameless life, and venerable years, commanded the respect of even the rough soldiers whom Santa Ana made use of in his violations of the laws of the country. From what I have been able to learn of him, I judge that even Marshall St. Arnaud or Bazaine himself would have felt constrained to treat him with deference. He was a man of method too, and a careful manager. During the brief period of his stewardship, he succeeded in terminating most of the varied litigations in which the "*junta directiva*" had involved the fund, had paid off its floating debt, cancelled unprofitable leases, and other-

wise had made the property productive. When General Valencia (Santa Ana's Officer), informed him of his orders to seize the fund, and rescue it from the evils of this sort of private administration, the old gentleman thought it his duty to protest, however vainly, against the proceeding. He did protest and had quite a lively correspondence with General Valencia. The later, however, was more of a soldier perhaps than a diplomatist, and presently threatened, after the manner of Brennus, to throw his sword and belt into the scale. Don Pedro, however, stood firm for a recognition, at least of his position, and insisted of delivering the property according to an inventory or "*Instruccion Circunstanciada*," in which the exact state of the fund, the properties, the rents, the mortgage investments, etc., were all set out, and in deference to his age and character, and I think I may add to his pluck, the general consented and the delivery was so made. The ship was sinking, but the old *apoderado*, like the heroic victims of the Birkenhead disaster, was determined to maintain his honor to the last and go down with ranks dressed, and to the word "Attention." He drew up his "*Instruccion Circunstanciada*" in duplicate, delivered one copy duly authenticated by himself to Gen. Valencia, and transmitted the other to his principal, with a copy of his correspondence preceding the final surrender, and thus the capital of the "Pious Fund," after about one hundred and sixty years of separate existence, was engulfed in the maelstrom of the Mexican Treasury.

The fund had so long ceased to yield any substantial support to the missionaries that its final absorption made no appreciable change in their circumstances or in the resources of the missions. The younger men had known nothing of it, and the elder ones remembered it only in connection with the "good old times" when things were better managed than they are now. Its origin was lost in antiquity, no papers existed in the mission archives relating to it, and it came ere long to be practically forgotten. When the State Government was formed, there was a tradition in the country that such an institution as the "Pious Fund" once existed, and that Santa

Ana had abolished or confiscated it, that was about all. In 1851, the State Legislature appointed a committee of Enquiry on the subject, which examined all the old inhabitants as to what they knew of it, but was in the end compelled to report that all they could discover was that there had been such a fund, and that it amounted to a very large sum, but as to where it came from, how it arose, what it was, or what became of it, they could discover nothing. It was "one of those things no fellow could find out."

In 1853, Archbishop Alemany, then Bishop of Monterey and successor to Bishop Diego, brought me a small package of papers, which he had found in the archives of his predecessor in office, saying that they related to the "Pious Fund," and he desired me to look them over and see whether he had not some claim against either Mexico or the United States, for indemnity or compensation by reason of Santa Ana's acts of 1842. I read them over and amongst them found the "*Instruccion Circunstanciada*" of Don Pedro Ramires, a copy of Santa Ana's decree and some other scraps, which gave me some idea of the matter, not very clear, but sufficient to build on. Subsequently in 1857, the Bishop renewed the subject, and retained me in conjunction with another gentleman, now deceased, to endeavor to obtain for the Church whatever she was entitled to in this connection. Thenceforth I began to read Mexican and Californian history to see how much could be discovered in printed publications about the "Pious Fund." And here Don Pedro Ramires's methodical discharge of duty proved of incalculable value to me. His "*Instruccion Circunstanciada*" named each piece of property, urban or rural, which he delivered over. Among them were the haciendas of "*Guadaloupe*" and "*Arroyo Sarco*," the purchase of which I found mentioned in Venegas as far back as 1716, and those of "*San Pedro Ibarra*," "*El Torreon*" and "*Las Golondrinas*," which are named in the Marquis de Villa Puente's deed. These names enabled me to identify the property and trace its acquisition. The labor of investigation soon became itself a pleasure, and, in the succeeding ten or eleven years, I picked up

—a scrap here and another there—the material of the history I have just recounted to you. I had not indeed any sanguine hope of ever establishing any claim for the Bishop, but, if opportunity ever presented, I was prepared to open my case upon very short notice, and in the meantime I had had a deal of pleasure in making the preparation. I had renewed my acquaintance with Cortez, Alvarado and Sandoval ; become intimate with Mendoza, Bucarelli Revilla-Gigedo and Galvez, got acquainted with Fathers Salvatierra, Ugarte, Kino Consag, Serra, Paloo Verger and Crespi, and altogether had succeeded in introducing myself to a most agreeable circle of society, concerning which my only regret was that so few of my contemporary friends knew them or appreciated their worth. The professional interest which first led me to take up the study gradually faded away, and the historical interest became broader. The Bishop ceased to cherish, and finally dismissed from his mind the hope of recovering anything on account of the "Pious Fund ;" my associate counsel, absorbed in other affairs, public and private, forgot all about our retainer, and I had ceased myself to think of the case in connection with any legal proceedings.

On Sunday, March 28th, 1870, I casually took up a New York paper and my eyes full on a paragraph stating that "Wednesday, the 31st instant, would be the last day for presenting claims to the Mixed American and Mexican Commission then sitting in Washington." I was away from the city at the moment, and no conveyance could be obtained before the next day. The "Pious Fund" as a case in my charge had so long appeared a hopeless one, that I had not even noticed that a claims convention had been agreed on between the two governments. I hurried to the city next morning, soon got hold of the convention of July 4th, 1869, and read it. Demands under it were limited to injuries to persons or property committed by either Republic on the citizens of the other, since the date of the treaty of Guadaloupe Hidalgo, February 22d, 1848. It was clear that the wrong done in seizing the "Pious Fund" and taking it into the public treasury in 1842,

could not be made the subject of reclamation under the convention. I read it again, with the mental enquiry, "Is there no way to bring our claim under this treaty?" The time for deliberation was very short. My client was away in Europe; his Vicar General knew nothing whatever of the matter. My associate was in Washington evidently oblivious of the whole affair; there was nothing but to decide on my own responsibility and act at once. I determined to waive all claim for the property of the fund, treat Santa Ana's decree as a *bona fide* purchase of it, at the price and in the terms indicated in its text, and demand damages for the non fulfilment of the contract by the payment of the installments of interest accrued since the treaty of Guadalupe Hidalgo. I sent a telegraph to Washington outlining the claim, and desiring it to be filed with the commission, and by the following Wednesday had the satisfaction of learning that my message had been received and the claim seasonably presented. The details of the litigation would have only a professional interest and I omit them. The case was defended, at first by the late Caleb Cushing, and after his appointment to the Spanish Mission by Don Manuel Aspiros, a gentleman whose historical and professional attainments it would be difficult to find a rival for. The two commissioners differed in opinion, and the case being referred to Sir Edward Thornton, then British Ambassador in Washington, as umpire, he gave me an award for the half of the accrued interest belonging to Upper California, amounting to nine hundred and odd thousand dollars.

In the progress of the case I compiled and printed for the use of the commission numerous extracts from published works, in which the subject was referred to. I got General Rosecrans, who went to Mexico on business of his own, to apply to the successor of the notary who had taken the acknowledgement of the Marquis de Villa Puente's deed, for a certified copy of that document. The Government forbid him to furnish it. The General then fresh from the civil war, in which he had become disciplined to the maxim that "obstacles were made to be overcome," brought a suit in the

name of Bishop Alemany against the notary, to compel the production of the copy. The Government intervened and objected to his doing so on the ground that it was wanted as evidence against the Republic, and that the bishop had no legal interest in demanding it. The judge, however, decided that the objection was not sound and ordered the copy furnished, which it was, attached to a copy of a judgment roll in the action.

After the case was decided I compiled what copies I had left of these old printed papers and made them into a volume, and in that form I beg leave now to present them to the Society and request they may find hospitality in its library.

AS TO THE DIVISION OF THE FEES IN THE
PIOUS FUND CASE.

1. At the end of a professional career of over thirty-six years, I find myself, for the first time involved in a controversy about my own fees, and that with an associate in the case and a family connexion. It is painful and humiliating, but whenever the correspondence which has preceded this discussion shall be disclosed, I trust it will appear to the satisfaction of all that I am not responsible for the controversy, much less for its harsh character. Differences are liable to arise between friends, but the cases are rare in which some middle ground cannot be found on which to establish harmony, by reasonable mutual concession, and still more rare are those in which justice and peace cannot be brought together by reference to some third person whose friendship and impartiality may give to his recommendation the force of an award. Such solution of this difference I hoped for and strove to bring about; but my offers of compromise were rejected, my invitation to friendly discussion spurned, and my entreaties for a friendly arbitration met with insult, to which injury was added in the hope of coercing me by pecuniary pressure. I have thus been constrained in self defence to accept a quarrel which I would gladly have avoided. If the exposition of the facts shall reflect harshly on the conduct of others, the responsibility of rendering such exposition necessary, rests on him who left me no other mode of settlement.

2. The controversy is between Mr. Casserly and myself as to the proportion in which we should divide between us, the twenty five per cent. of the recovery appropriated for the payment of counsel fees in the Pious Fund case. I claim to be entitled to one-half of the amount. Mr. Casserly, when first our difference of opinion was developed, claimed to reduce

my proportion to one-third, but as he seems, since that time, to intimate that he has changed his ground, I must leave him to define his own claim.

For the history of the Pious Fund and the nature of the litigation about it, I refer to the printed papers in the case, and the text of the convention between the United States and Mexico, July 4, 1868. The following is the history of the proceedings in, and of our connection with the case :

HISTORY OF THE PROCEEDINGS.

3. In 1853, while Mr. Casserly and myself were partners in practice, sharing our profits equally, Archbishop Alemany consulted us about a claim against the Government of Mexico, for what is known as "The Pious Fund of California." I examined a number of Spanish documents shown me by him, made a written synopsis of the information gleaned from them, and gave the Archbishop an opinion that nothing could be then done for its recovery, but that whenever a convention should be made between Mexico and the United States, for the settlement of private claims on the respective Governments, we might probably be able to establish some claim for it.

In 1857, when I was about to leave California, for New York, the Archbishop renewed the subject, and desired Mr. Casserly and myself to let him know on what terms we would undertake that case, taking such steps for the recovery of the demand, as we might, at any time, deem best. Our partnership had been, long before, dissolved, but he desired to employ us both, and we agreed to undertake the case. Twenty-five per cent. of the net amount collected, was fixed on as our fee. The details of the arrangement were left to be put in writing by the Archbishop and Mr. Casserly after my departure for New York (April 20, 1857), and it appears that on May 20th of that year, after I had reached New York, he addressed to the Archbishop a letter, to which he affixed my name and his own in the following terms :

"Most Rev. Joseph S. Alemany, Archbishop of San Francisco.
 "Most Rev. and Dear Sir : In a matter of such importance and
 "magnitude as the effort to recover the Pious Fund promises to be,
 "we feel assured we will consult your wishes in reducing to writ-
 "ing the understanding on which that business is undertaken by
 "us, more especially as it is not improbable that a long time may
 "elapse before the collection of any money would give an occasion
 "to recall to mind our conversation.

"We understand we are to use our best efforts to reclaim and obtain for yourself and Bishop Amat the Pious Fund of the Californias from the Government of Mexico or that of the United States, or any other, or to obtain compensation or indemnity for the confiscation of such property, and that we shall advance and pay out all such sums of money as may be necessary to meet the expenses we shall incur in the prosecution of the demand. In case nothing is recovered and received we are to make no claim on yourself or Bishop Amat, or your successors, either for money disbursed or services rendered.

"Wherever any money or valuable thing shall be recovered and received, it shall be applied first to the reimbursement of the expense which we shall have paid or incurred, and after those are repaid we shall receive or retain for our compensation one-fourth part of the residue. The other three-fourths thereof shall be paid to yourself and Bishop Amat, or your successors, or to such other persons as you or he may direct, or to whom the same may be adjudged.

"We, on our part, are to be at liberty at any time when the expense shall appear too great, or the probability of obtaining any favorable result too small, to discontinue the further prosecution of the claim, losing our labor up to that time.

"You and Bishop Amat, on the other hand, shall not be responsible to us for payment of disbursements incurred, or services rendered or procured to be rendered by us, unless in the event of your actually receiving money or property; and if hereafter, in the progress of the affair your superior ecclesiastical authorities, or a sense of duty on your part, should compel you to transfer your legal rights to some other ecclesiastical person or body, you and Bishop Amat shall not remain personally responsible to us for services or disbursements. In such case you and he will exercise such influence as you may have to cause the transferees to acquiesce in and recognize this engagement, and, in case they should refuse to do so, will do no act to impair such claim as we may have on the fund itself, or on its future representatives or owners."

I have no recollection of having known the contents of this letter before January 12th, 1871, but assume that I had authorized Mr. Casserly to put my name to it, and that it expresses correctly the contract between the prelates and ourselves. Full powers of attorney for the purpose were thereupon executed in our favor by the Archbishop, and afterwards by Bishop Amat, under which I made a formal presentation of the claim to our own Government, on July 22d, 1859.

4. From the time that the case was thus put into our hands I began to hunt for information about the Pious Fund, and to that end I became an assiduous reader of Mexican history,

and Mexican books, and public documents, wherever I could meet with them. Our clients had little knowledge of the matter, save that such a fund had existed in Mexico; that large properties, real and personal, had belonged to it, and that it had been seized by Santa Anna in 1842 and diverted from its original destination.

The Legislature of the State had in 1851 appointed a committee to make enquiries about it, who examined witnesses, old Californians and others, including the Archbishop, but reported that they could discover nothing definite about it. I had a conviction that the time would come when a claim for it could be established, either against Mexico or the United States, and I devoted myself to discovering its history. The books and documents I bought and read, with reference to the subject, during the eighteen years that elapsed between 1857 and 1875 would make a long list. Whenever I found a book on any bookseller's catalogue (and I read every catalogue I came across), which by its title suggested that it might contain any information bearing directly or remotely on the subject, I bought and read it. In very many of them my search was barren of all result; in other instances I found a single kernel of grain amid a mountain of chaff; but, gradually I accumulated a great deal of information on the subject and was able to trace, pretty clearly, the history of the fund, from information contained in printed books, newspapers and public documents, from its origin, in 1697, down to its seizure in 1842. I became familiar, too, with the early history and organization of the missions in California and other frontier provinces of Mexico, and with the general subject of Spanish Colonial history, the relations of the Government to the Church, the religious orders, etc. I will furnish a list of some of the works I refer to. What study Mr. Casserly made of the case he will relate himself. My belief is that he made none.

5. On July 4th, 1868, a convention for the settlement of private claims was concluded between the United States and Mexico, under which this claim became presentable. The commissioners were appointed and held their first meeting in Washington, July 31st, 1869. Eight months from that date being allowed for presenting claims, the time for doing so would expire March 31st, 1870. Those not presented by that time were outlawed and forever barred. I was living in San Francisco at this time and did not learn of the conclusion of this convention till March 28th, 1870. Mr. Casserly, however, having been elected to the United States Senate in 1867, took his seat in that body March 4th, 1869, and must

have known of the existence of this joint commission, at least, as soon as it commenced its sessions. He should, I think, have either presented the claim, or called my attention to the existing opportunity, that I might do so. He did neither, having, as I suppose, totally forgotten our arrangement with the Prelates, or that we had undertaken to present their demand.

6. On March 28th, 1870, I learned the existence of the Convention, read its text carefully, and decided on the shape in which our claim would have, to be made, to come within its terms. As this became, in the end, the turning point of the case, and will have to be remarked on to illustrate the value of Mr. Casserly's services, it may be well to explain it at once.

7. The taking of the capital of the Pious Fund into the public treasury of Mexico had, down to that time, been generally regarded as a wrong done to the Church by Mexico; a confiscation, in fact, of the property, merely cloaked under the pretext of administering it. As this occurred, however, in 1842, while the Church of California was a Mexican corporation, and the convention was limited to claims of *American citizens* against Mexico, for "injuries to their persons or property," arising out of transactions subsequent to February 2d, 1848 (the Treaty of Guadalupe Hidalgo), and expressly provided that no claim founded on any transaction of earlier date should be admitted, it became necessary to seek some ground on which to place our demand different from the original seizure in 1842. The alternative which occurred to me was to treat the taking of the fund by Mexico as a lawful act, and claim damages only for the non-fulfilment, since February, 1848, of the promise to pay interest on the proceeds contained in the law under which it was taken. The adoption of this alternative would, of course, require us to bring our claim within the words "injuries to property," as used in the convention. That, however, involved merely a question of construction, and was, at least, possible, while the difficulty presented by the other alternative (claiming for a wrong done by the original seizure in 1842) was insuperable. I, therefore, determined to treat the original taking of the fund as legitimate, and claim the annual interest on its proceeds as a debt. The event showed that I was right, for on this ground the claim was recovered.

8. But the adoption of this course necessarily involved the assumption that the seizure of 1842 was valid; for, our claim being based on it, to prove it void would be to prove our

claim equally so. This principle is familiar to Common lawyers, and must obtain in the civil and canon law too, for it is perfectly logical. At common law, if one take my property wrongfully, I may either sue him for damages for the wrongful act, or waive the wrong and sue him, as on contract, for the value of the property taken, just as if I had sold it to him, and he had agreed to pay its value. If I adopt the latter course I am said to "waive the tort and bring *assumpsit*."* But in all such cases the *waiver of the tort*, or wrong in the original taking is essential; for only by thus consenting to the taking can I give to the transaction the character of a contract, to which a *consensus animorum* is essential.

9. This, then, was the course I decided on taking with the Pious Fund claim, viz: treat its incorporation into the Mexican Treasury as valid, and claim payment of the interest accruing since February 2d, 1848, on its amount or value, as the purchase price promised by Mexico. I thereupon despatched a telegraph to Mr. Casserly at Washington, requesting him to present to the Mixed Commission a claim on behalf of Archbishop Alemany and Bishop Amat, (each of them incorporated as a corporation sole, under our Statute) successors of Bishop Diego, for the interest on the proceeds of the Pious Fund of the Californias, from February 2d, 1848, referring him to the decree of Santa Anna, and reminding him briefly of the history of the fund, lest it might have escaped his recollection. This telegraph fortunately reached him in season, and the claim was presented by him, just in time to save our day in Court. [Mr. Casserly, about this time, retained Mr. Nathaniel Wilson, of Washington, in the case, for what reason, or on what terms, I never learned. But I believe he had other cases before the commission and retained Mr. Wilson in all of them, to avoid compromising his Senatorial dignity.]

10. It next became necessary to present to the Commission a "memorial" of our claim, and it had to be filed by the first of January, 1871. It was an anomalous sort of pleading, unknown to any system of law that I know of, and as its form and requisites were regulated entirely by the rules of the Mixed Commission, I wrote to Washington for a copy of those rules, in order to prepare it in conformity with their requirements. They had been adopted as early as August 10th, 1869, and were in print, but neither from Mr. Wilson, nor Mr. Casserly, could I ever obtain a copy of them. This serious fault greatly endangered the case, as will presently ap-

* At common law the Action called "*assumpsit*" was resorted to for the enforcement of simple contracts.

pear, and argues grave neglect of duty on the part of my associate.

11. Other entanglements, which enhanced my labors in the case, arose at this stage of the proceeding, for only a part of which Mr. Casserly is responsible, though a little earnest attention to the business on his part would have easily remedied them. He was, as he alleges, quite busily occupied at the time by Senatorial duties, and that excuse must avail him, *quantum valere potest*. The difficulty referred to arose as follows: at the time of presenting the claim, in March, 1870, the Archbishop was absent in Europe, and Father Croke, V. G., acted for him. He probably was unaware of the arrangements of 1857, under which the case was prosecuted, and as I learned afterwards, thought it judicious to economise lawyers' fees as much as possible. For the purpose of acquainting himself with the particulars of our case, he borrowed from me several of the papers which had been originally placed in my hands by the Archbishop in 1853, and having examined them and the Convention he seems to have taken up the idea that he had but to present these documents in Washington to get our money. He accordingly, without acquainting me with his intention to do so transmitted the papers to Father Hugh Gallagher, whom he had already dispatched to Washington. The result of all this was, that when there was question of preparing the memorial, Father Hugh was pressing the lawyers in Washington to proceed, and they not possessing the requisite knowledge of the case, to do so, evaded his demand by delays and excuses. Instead of writing to me for the information they required to enable them to draw the pleading, or sending me the rules of the Commission, that I might prepare it, they assumed that they already knew all the facts of the case, and treating the claim as that of the Bishops personally, demanded of Fr. Hugh the dates and evidence of their naturalization. For this he wrote to Fr. Croke, and the latter neither sent him the information, nor communicated to me the letters he received. The only list of the properties and values taken by Mexico, was in Mr. Casserly's possession, delivered to him by Father Hugh. The only person acquainted with the history of the fund, and to whom such list would be available in preparing the memorial, was myself, who was in San Francisco, and had no copy of the rules in conformity with which it had to be drawn. Altogether this mis-step of Father Croke's led to infinite trouble and cross purposes. Mr. Casserly's fault in connection with it is that he did not promptly recognize that without a full knowledge of the his-

tory of the Pious Fund it was unsafe for attorneys in Washington to prepare a Memorial, and impossible for me to do so without the rules of the commission. Half an hour's serious connected attention to the case would have shown him this, and it would all have been overcome by sending me the rules. This in fact should have been his first step, in any case, as a knowledge of the rules and forms of proceeding was essential to enable any associate to render any reliable service in the case. He does not seem to have found the necessary time for the purpose. Father Hugh called frequently on him and on Mr. Wilson, and complained that they gave him their attention, grudgingly, and only at odd intervals. Mr. Casserly appears to have turned the matter over to Mr. Wilson, and the latter announced his inability to do anything without the possession of evidence wholly irrelevant to the case, and so for months—precious, precious months—the case was at a deadlock for want of an hour's serious attention to it by Mr. Casserly. But for the fact that the duration of the commission was prolonged by a supplementary convention, this delay would have been fatal to us! My own infinite vexation and anxiety during these delays, are of little importance here; but as the facts illustrate the ability and efficiency of my associate who was in charge of the case in Washington, they are important. How Mr. Casserly ever expected me to be able to render any service in the case without knowledge of the rules which governed the proceedings of the Tribunal, or why he never sent me those rules I have never been able to find out. Why such importance was attached to the dates of the naturalization of the Bishops is even more inscrutable: for the claim, being on behalf of two California corporations, organized under public law, the citizenship of the individual incumbents—and especially the date when they acquired it—had no more to do with the matter than the height of the mountains in the Moon.

'12. As the Summer and fall of 1870 wore on I began to realize that the prospects of the Pious Fund case were growing less and less favorable. Both the Bishops were away at Rome, and no one here, with authority and will, to break up the deadlock in which it was entangled. I saw that I had no real assistance to expect from Washington from Mr. Casserly's indifference to the case. The last day for filing our memorial was December 21st, 1870, and the dead-lock referred to, continued so late, that it appeared as if our claim after having so narrowly escaped loss by non-presentation, would be lost now for want of a memorial. "*Sec! Dis aliter visum.*"

13. In the latter part of November, 1870, I learned of a copy of the rules of the Commission in the hands of Don Juan Robinson, of this city. I borrowed it, and at once set about preparing a memorial, of which I forwarded to Mr. Casserly the requisite number of copies, in print, on December 13th, 1870, and they reached him just in season to be presented. The Memorial was accompanied by a history of the Fund from its foundation in 1697, supported by numerous citations from printed historical works.

14. Mr. Wilson and Mr. Casserly had, in the meantime, drafted a memorial and had it in print, leaving blanks for the dates of the naturalization of the Bishops. It put the claim upon the ground that the taking of the Pious Fund by Mexico, in 1842, was a wrongful conversion, and while claiming that "*even under*" that law the claimants were entitled to interest on the capital of the fund, concluded, with the distinct announcement, "That by presenting this claim for damages, or interest for the detention of the principal sum of the Pious Fund, *they do not waive*, or relinquish their claim for damages on account of the principal sum so detained and converted, and *they hereby expressly reserve their right to claim and demand damages from the Mexican Republic for the detention and conversion of the principal of said Pious Fund.*" I have already shown that, placed on these grounds, our claim would have been inevitably defeated. A wrongful conversion in 1842 of the property of Mexican citizens, by Mexico could, by no process of reasoning, be brought within the terms of a convention providing for compensation for injuries committed to the persons or property of American citizens subsequent to February 2d, 1848. Hence the adoption of a memorial putting our claim on such ground argues either bad faith, incompetency, or gross negligence. The responsibility for it Mr. Casserly cannot escape, for the memorial (by whomsoever prepared) was edited and approved by him, and he had been expressly warned against the error; for, as early as April 26, 1870, when replying to his acknowledgment of receipt of my first telegram I had written him as follows:

"I see on examining the Convention a provision that it is not to include any claims arising out of a transaction prior to February 2d, 1848, which is, I believe, the date of the Treaty of Queretaro. This will render it necessary to shape our claim somewhat differently from what we originally designed, so as to meet that clause, to effect which I have thought of the following:

"The fund, by whomsoever administered, was always acknowledged as a trust. The beneficiaries were always the Catholic

"clergy and people of the two Californias. The Act of the Mexican Congress of 1836 only made the Bishop its Trustee, and Santa Anna's first decree of 1842 merely removes him and appoints General Valencia such. The *cestui que trust* and the destination, etc., of the fund remained the same as before. Santa Anna's second decree of 1842 did not pretend to alter this, or to confiscate property, but *for economy of administration only*, ordered it sold and the money paid into the public treasury, which was to pay the beneficiaries six per cent. per annum on it forever thereafter.

"*My idea is to claim under that law the proportion of this interest corresponding to Upper California.* So far as it accrued prior to February 2d, 1848, it is, I suppose, released by the last convention; but the annual instalments since that date have never been paid, and are still due, and, I suppose, provable before the commission."

15. That any man with that letter before him, and having a mind to do rightly, should have approved of the Washington memorial is only to be accounted for by ignorance or neglect, or both. Mr. Casserly may choose which ground he will put his approval on.

Fortunately, providentially, perhaps, I should say, my memorial reached him in season to prevent the presentation of his own, and be adopted it. He wrote me (Dec. 28th, 1870):

"It is no flattery to say, after reading and re-reading your memorial and history, they seem to me a very able and complete statement of the case. In our memorial here I put the claim on the ground of damages for the conversion of the fund by the Mexican Government and its continued detention. The treaty speaks only of claims founded on 'injuries,' in the Spanish '*perjuicios*.' A great contest will be over the construction of the word."

In the same letter (speaking of the memorial) he said:

"By reason of the added exhibits and *some allegations inserted at end of memorial to meet anticipated objections before the commission*, Father Hugh will verify; it is better he than I."

Long afterwards I found out to my horror and alarm that these "allegations inserted at end of memorial to meet anticipated objections" consisted of the following two paragraphs, which, had they been seasonably noticed by the advocates of Mexico, might have cost us the loss of our claim. They were a recurrence to the same suicidal idea that the original taking by Mexico was wrongful! Here they are:

"In the claim presented on or about July 22d, 1859, to the Department of State of the United States, as before stated, nothing was included for damages, or in the nature of interest for appro-

"patriation and use by the Government of Mexico of the property and money, or otherwise composing the Pious Fund."

"In presenting this memorial the said claimants do not relinquish but expressly reserve their right to claim against any Government liable thereto, for the principal sum of the money and other property composing the Pious Fund, and received and appropriated by the Government of Mexico as above set forth."

17. Without knowing of these changes, however, I was alarmed by the expressions I have quoted above from Mr. Casserly's letter. They indicated an obscurity and confusion in his ideas which I felt might, at any moment, occasion some irreparable mischief. I, therefore, January 11th, 1871, immediately on receipt of his last mentioned letter, wrote to him:

"I dissent from the idea of going for an original conversion of the fund, for it preceded Feb. 2d, 1848, the limitation fixed in the Convention. I prefer to waive the tort and bring assumpsit, for all that came due, on the express promise, after that date. I note the words 'injuries to property' in the convention, but do not esteem them so formidable an obstacle. They must be construed in connection with the other expressions of the Treaty, and so construed are, I think, broad enough to cover our claim.

"Besides, precisely similar words have been construed to include detention or deprivation of property, such being injuries to the owner's right of property therein. Suppose one of Ben Holladay's steamers taken possession of in Acapulco, and appropriated; not injured in the least, but simply confiscated, surely he could claim, under the Convention; and if a chattel, why not money?"

After that I heard no more of claims for the original taking. On the contrary, Mr. Casserly, like a recanted heretic, when he did make a tardy public declaration of faith in the case, was explicit in support of the contrary doctrine, and in condemnation of that invented by himself. See his argument before the umpire, p. 9, etc.*

18. Our case was now fairly launched by the filing of our memorial. The next thing was to support it by proof. In connection with this branch of the work I had another instance of Mr. Casserly's peculiar method of *management*; but, in order not to interrupt the narrative of the proceedings, I postpone mentioning it till a later period, when it will, also, be better understood.

* "What we complain of," says he, "is *not* that Mexico has taken the trust and its estate into her own hands, but that she has not performed the obligation assumed by her of paying the annuity fixed by herself at six per cent. per annum on the value of the capital of the Pious Fund, also fixed by herself." Arg't. p. 9. See also pp. 2, 17 and 17.

19. On April 24th, 1871, Mr. Cushing, as attorney for the the Mexican Government, filed a motion to dismiss our case on the grounds, "1st, that the petitioners, as local corporations could not claim property outside California. 2d. That they showed no interest in the Pious Fund. 3d. Because they had a legal remedy, in the Mexican Courts; and 4th, because the injuries complained of were done before February, 1848 and therefore not cognizable by the Commission;" and supported it by a written argument.

20. Mr. Casserly, at this stage of the proceedings, retained Mr. Philip Phillips, of Washington, as counsel in the case. I am not informed of the date or terms of his retainer, nor did he consult me about it.

21. I prepared and printed an argument against Mr Cushing's motion, which will be found among the papers. One was also presented in the names of Messrs. Phillips and Wilson, of which I furnish a copy. Mr. Casserly made no argument, and did nothing about it, that I ever heard of nothing!

22. The motion remained long undecided; in fact, never was formally determined and the time for the sessions of the Commission, which was prolonged by a supplementary convention, was drawing to a close. I was excessively embarrassed for, on the one hand, it was deemed premature by Mr Phillips to take testimony before the decision of the motion to dismiss, and on the other hand was the obvious danger of waiting so long for the decision, as not to leave sufficient time to obtain the proofs. It had been part of my original plan of proof, to send an agent to Mexico to obtain information and copies of documents, and also to demand from Mexico, through the commission, a discovery of the amounts received into the Treasury out of the proceeds of the Fund, and I corresponded with Mr. Casserly and Mr. Phillips on the subject. At first Mr. Casserly was eager to send off an agent to Mexico, at once but as soon as he learned from me that the Archbishop claimed that, by the terms of the original contract he would have to pay half the expense of such a mission himself his opinion underwent a sudden revolution. Or rather, as he himself, assures us, it changed in anticipation of the information, for, in reply to my letter of January 13th, 1871, calling his attention to it, he wrote me, January 28th, 1871;

"Before hearing from you of the agreement to pay expenses,—as
"to which my idea is like yours, that it was a matter subsequent
"to our retainer, and was really never closed by the Archbishop—
"Father Hugh and I had substantially concluded that a special
"messenger to Mexico, was not necessary."

23. As Mr. Casserly says that this change of opinion occurred before he learned that half the expenses of the Mission would have to be borne by him, the tribunal will I suppose assume the fact to be so. But it would be very interesting to know on what ground the conclusion was arrived at. The decision that it was unnecessary to send to Mexico for proof, implies, that he had in view some other mode of getting it. What that mode was, I never heard even intimated, and even now with all the subsequent facts before him, I think he would be much puzzled to say how he ever expected to prove our case without sending to Mexico. One thing is certain, that he never did either offer or suggest any proofs, and I, therefore, cannot but look upon it as a circumstance fortunate for his good name and good faith, that his decision that it was unnecessary to send to Mexico was reached *before* he learned that he would have to advance half the outlay, as otherwise, it might be surmised that his judgment was influenced by the discovery.

Unfortunately too, Mr. Casserly's judgment, on this point, however impartially formed, was erroneous, as will be readily seen, from the following considerations.

24. I had shown historically the existence and general character of the Pious Fund from its origin, in the charitable contributions mentioned in Venegas' History, down to its seizure by Santa Anna, in October, 1842. But we had no proof whatever of the terms of the trust, and that was a point on which the *onus probandi* was clearly on us. And here Mr. Cushing made a very dangerous attack on us, in his motion to dismiss. I felt the force of the argument and the difficulty of answering it, and so, I am persuaded, did Mr. Phillips. I possessed however, an unauthenticated copy of the deed of the Marquis de Villapiente and his wife, and I introduced it in my argument as a document that *would be proved* in the case. It contained a definition of the trust; and the quantity of property conveyed in it was, obviously, so great that it might with some propriety be termed, as we frequently did term it, the deed of foundation. The argument was then made on the terms of the trust, as expressed in that deed; but that deed we had yet to prove; offering to prove it we could not be non-suited on our own statement; but failing to prove it we would have been so, for want of proof. Now the proof of the deed existed only in Mexico, in the office of the Notary where it was registered. How this was to be got at, save by sending to Mexico, I confess I was then and have ever since been unable to see. If Mr. Casserly

saw it, he should either have obtained the proof himself or told me how to do it, neither of which he did. If he did not, he should now explain how he expected to get along without it, and how a messenger to Mexico was unnecessary. The way the paper was obtained was as follows :

25. Early in March, 1872, General W. S. Rosekrans went to Mexico about business of his own, and offered to take charge of any commissions. I furnished him in writing a list of various papers and books I wanted from that country, beginning with the deed of the Marquis and ending with the "*Historia de la real hacienda, escrita per D. Fabian Fonseca y D. Carlos de Urutia, per orden del Virey conde de Rivilla Gigedo*," a book of which I had never been able to find a copy, but in which, from the character of the Viceroy and the date of its production I was persuaded I should find an account of, or some favorable reference to the Pious Fund.

The General executed his commission like a man whose heart was in the work he was doing, and not in the compensation he was to receive for it. He was refused a copy of the Marquis' deed, and had to institute a suit to obtain it. But obtain it he did, with an authentication, all the more valuable because it had been extorted by legal proceedings *in invitum*, and the copy itself only appeared at the end of the judgment roll in the suit, wherein the Court decided that it must be furnished. He was unable to purchase the "*Historia de la real hacienda*" for me, but he found a copy of the book in a private library in Mexico, examined it, and, finding an account of the Pious Fund in it, copied it out and sent it to me in MS. The other papers he could not obtain for me, but what he did get were most important. For his services the General has, since the money has come in, been paid five hundred dollars, and Mr. Casserly, who decided that such service was unnecessary, is claiming many thousands.

26. The Marquis' deed proved the terms of the trust and the remaining material point to prove was the amount of the property at the time Mexico took it. For this purpose Mr. Phillips agreed with me that the Commission should, on motion, direct a discovery of the amounts received by Mexico, to be made by its Government. I could not make such a motion, for it had to be done in Washington. Why it was not done perhaps Mr. Casserly can explain ; I cannot. If I ever heard any reason assigned for it I have forgotten it ; my recollection is that none was ever given.

27. Yet some effort had to be made to prove the amount, and failing of any aid from Washington, even in the way of

expediting a decision on the exceptions, I decided to examine such witnesses as we had here. I therefore took the deposition of the M. R. Archbishop, and not being able to travel myself, I employed Mr. H. P. Bowie to proceed to Santa Barbara to examine there Padre Gonzales, formerly V. G. of the Diocese, and gave him elaborate instructions as to the matters to be elicited and the whole theory of our case. His fee was agreed on at \$150 cash and \$500 additional contingent on success. Mr. Bowie discharged his duties with zeal, ability and good sense. On one point (the handwriting of Pedro Ramirez), on which I had confidently relied on Padre Gonzalez, it turned out most singularly that the Rev. Father had no knowledge whatever. Mr. B., instead of returning *re infecta*, started in pursuit of another Mexican Father (Padre Romo de Jesus) whom he heard of as residing within a few miles. He proved to be a nephew of Don Pedro Ramirez and well acquainted with his handwriting, having been formerly secretary of the College of Guadalupe, at Zacatecas, in Mexico, in which capacity he had much correspondence with him. Mr. Bowie took his evidence, as well as that of Padre Gonzalez, and brought it to me in good shape, as it now appears in the files of the Commission in Washington.

These depositions, with the authenticated copy of the Marquis de Villa Puente's deed brought from Mexico by General Rosekrans, and three printed Mexican Treasury reports, which I bought in the City of Mexico, through Messrs. Barron & Co., were all the evidence in the case, except the printed extracts from historical works, which I had compiled and furnished. So far as regarded the amount of the fund it was quite meager, and would, I feared, be held insufficient; but it was all we could obtain without either a discovery from our adversary or a special messenger to Mexico. The latter of these Mr. Casserly deemed unnecessary, and the former he omitted to apply for. Such as it was, every particle of it was contributed by me, not one was of Mr. Casserly's procuring or suggestion.

28. Then came the argument. Mr. Cushing had accepted the Spanish mission and Don Manuel Aspiros took the position of counsel for Mexico in the case. That he is a gentleman of large abilities and extensive learning I need hardly say. The fact that the Juarez Government selected him for the position of Judge Advocate of the Court Martial which tried the Emperor Maximilian, shows what was thought of him in that respect at home. His selection for this case was

no doubt also suggested by his familiarity with the Mexican archives bearing on it, which had for years been in his official custody as chief clerk of the Mexican Department of State. He led off with an argument which fell upon us like Longstreet's charge at Gettysburg. It contained a comprehensive review of the missionary and ecclesiastical history of Mexico; the proceedings of the Spanish Crown during the colonial period, in its connection with the Church and missions, its statements fortified by reference to official documents, of several of which copies from the Mexican State Department, duly certified, were appended. His object was to prove that the missions were *quasi* political establishments. That the Church of Spain was established and encouraged by the State as one part of the machinery of Government. That, as between the two authorities, the State was superior. The Crown authorized and encouraged missionary efforts among the Indian tribes as a matter of State policy, and for like reason conceded to them a certain autonomy, but the control always remained with the Civil Government, and all church property was but public property, devoted for reasons of State to a particular class of public uses, but the destination of which the State always retained and from time to time exercised the power to change. That the exercise of such powers were acts of sovereignty for which no government could consent to be called to account without sacrificing its national independence. It likened the appropriation of the Pious Fund to the diversion of Church property from one charitable use to another at the time of the reformation, etc. The argument was divided into five chapters and one hundred and fifty-four subdivisions, with twenty-five documents annexed, covering probably one hundred and fifty pages of closely written MS. It was exceedingly able, ingenious and subtle. In thirty-five years practice of the law, I can safely say I never had a more troublesome argument to answer; for error and truth (historical and legal) were so artfully blended in it, principles so ingeniously assumed and argument so ably urged that I felt that we had a most difficult task to reply properly to it. These difficulties were not decreased by the fact that the original was in Spanish, and the translation of it furnished me from Washington was too imperfect to be relied on for the exact meaning.

29. The first thing, therefore, was to get at the original Spanish text of the document. Fortunately its author was, at the time, in San Francisco. I procured an introduction to him, and, after a little further acquaintance, induced him,

not without reluctance, to lend me his original draft of the argument in Spanish. With this I corrected the imperfect Washington translation, and then wrote my answer to it. And now I found the benefit of my long and assiduous reading in the case, for most of the documents quoted by Don Manuel were old acquaintances, and they, therefore, needed no new investigation to enable me to apprehend their due importance and bearing. In particular, I was able to turn against him the result of the litigation over the will of Señora Arguelles, of the judgment in which case a copy was annexed to his argument. Mr. Aspiros relied on the proceedings in this case as showing a large accretion to the Pious Fund by order of the Spanish Crown. In fact it was a bequest to the Jesuits for the missions, whereof the Crown was adjudged a trustee in place of the expelled Jesuits. Properly understood it was a potent confirmation of our case; misconstrued by the counsel of Mexico, it was all against us. Take it all in all, it was probably the most important document, bearing on the law of the case, which was submitted to the Commission. Yet, so little was the case understood or cared for in Washington, that no copy of this most important annex to Mr. Aspiros' argument was sent me, but, instead thereof, I was furnished with a brief summary of its contents, *stating them exactly the reverse of what they actually were!* It is annex No. 16 to Mr. Aspiros' argument. The summary of its contents sent me states that "*the sentence sets aside the will of Mrs. Josepha Paula de Arguelles, and declares her to have died intestate.*" The real purport of the judgment was to *sustain* the bequest and declare the Crown a trustee for missions! The argument founded on it will be found in my printed answer to Mr. Aspiros, pp. 11, 12, 13, and 14.

Fortunately for the claimants, I was already acquainted with the proceedings in that case, and had possessed myself of a copy (unauthenticated, but which I was well assured was correct) of the whole record, including the decree of affirmance pronounced by the Council of the Indies, to which the case was ultimately appealed. I had studied it thoroughly, and was, therefore, able to show that, properly understood, it sustained our theory of the Mexican law of charities, and overthrew the claims of Mexico founded on it. [See argument cited above.]

30. Neither Mr. Phillips, nor Mr. Wilson, nor Mr. Casserly, submitted any argument, on our side of the case, in opposition to that of Mr. Aspiros. My conviction is that no one but myself entertained any hope of success, and the case was

practically abandoned by all others. It was submitted on my argument alone.

31. After some time spent in deliberation, the Commissioners divided in opinion, and the case was sent to the Umpire. Mr. Casserly came to see me. He was still without hope, regarding it as lost by this difference of opinion. I told him, at once, that so far from sharing his dismal views, all my fears were gone, and that I felt we had won our case! It was one in which it would have been folly to expect to convince the Mexican Commissioner, but in which an English diplomatist, of the rank and character of Sir Edward Thornton, could never be against us. I succeeded, after a little time, in inspiring him with some hope, and with hope came valor.

Mr. Zamacoma, the Mexican Commissioner, had delivered a very carefully prepared opinion, which it was necessary to answer. Messrs. Phillips and Wilson submitted an argument to the Umpire, and I also did. Mr. Casserly having, as he informed me, business which would require his presence in Washington that Fall, was urged by me to anticipate somewhat the time of his departure and consented to do so. After his arrival there he also wrote and printed an argument on our side, which was submitted to the Umpire. It consisted of an abridgement of those made by his associates. I would not disparage its merits as an abridgement, and as such it may have served a useful purpose, but as an argument of his own it can scarce cut any figure. The constant reference in it to Mr. Doyle's argument (p.), argument of P. & W. (p.), Mr. Doyle's reply (p.), and the like, show clearly enough that the only study he had made of the case was of the printed arguments furnished him. This is confirmed by the fact that the moment he departs from that beaten track, and undertakes to make any independent statement, he falls into error. Ex. gr. he says "From Venegas in 1739" (p. 2) states the foundation of the fund in 1735; expulsion of the Jesuits in 1762; subsequent administration of the fund by the Franciscans for ten years; assumption of administration by the Spanish Crown in 1772 (all on p. 4), etc. Inaccuracies like these in general history any educated man would blush to fall into. They are as if he should fix the date of the Norman conquest in the year 980, or that of the expulsion of James II. 1750, or the like. Yet one would say that a lawyer arguing his case, and arguing it in print, should be, at least, as familiar with the historical facts and dates involved in it as with those of general history.

[Venegas' history was first printed in 1757; the Pious Fund was founded in 1697. It was never administered by the Fran-

ciscans. The expulsion of the Jesuits was ordered by a decree of March 20th, 1767, and took effect throughout Spain between March 31st and April 2d, 1767, and in California on the first of February following (1768). The administration of the fund was at once assumed by the Crown.] These errors though of minor importance in themselves are characteristic; they show Mr. Casserly's unacquaintance with the case down to the last moment.

32. The result of the litigation is known. We obtained a judgment on the decision of the Umpire of \$904,000 and over. An effort was then made by the counsel for Mexico to be admitted to show that the amount awarded us was too large, and Mr. Casserly was again plunged into despair about it. How such a proposition was to be opposed, what argument to offer against it, he did not know. He wanted to write Mr. Wilson or Mr. Phillips on the subject, yet had no idea what ground to suggest to him. I explained to him, orally, the legal objections to such a proposal, based on the provisions of the convention; that the Umpire had only to pass on matters whereon the commissioners had differed. That the difference between the commissioners in our case was not as to the amount or any detail, but as to the liability. That the Umpire had no power to take new evidence, but must pass on the case on the evidence submitted to the Commissioners; that he had no power to reopen the case, which would be, in effect, to grant a new trial. etc. He was so demoralized about it that he seemed incapable of taking in these suggestions or putting them into form for his letter, and begged me to put them in writing for him. I sat down in his office and rapidly wrote them out for him. These he made the basis of his letter to Mr. Wilson, or Mr. Phillips, whichever he was writing to. The Umpire denied the motion, and our award became perfect and final.

33. Such is the history of the commencement, progress and conclusion of the litigation for the Pious Fund. From the beginning I was, I believe, the only person who had any confidence of success in it, or any clearly defined, tenable theory on which to base our claim. That theory, the correctness of which the result of the litigation proved, I had to force on my associate, who, after drafting and printing a memorial, which put our claim on grounds that would have been fatal to it, and having been corrected therefor, proceeded still to make that maladroit alteration of my memorial which I have pointed out above, to adapt it to his own crude notions. The importance of this error he cannot be heard to deny or exten-

uate, for he has himself confessed it in print in his argument before the umpire, as I have shown above.*

34. In addition to my labors above enumerated, and which Mr. Casserly, in his argument (p. 17), has referred to by the terms "unusual diligence and research, extending over years, and to both sides of the continent," and the aggravation and annoyance of associate counsel who neither possessed any knowledge of, nor felt any active interest in the case, from whom I never received a single thoughtful suggestion, and who had to be prevented from throwing the case away, by constant vigilance, I furnished translations of all the voluminous documents proved here, some made by myself, some by others, which I carefully corrected; this latter was a task of no slight labor, from the fact that the translators were Spanish Ecclesiastics but imperfectly acquainted with our language, and wholly so with legal terminology. The bulk of the drafts of these translations have been destroyed, but I am able to present some specimens, yet in existence, from which the nature of the labor can be judged. A very few papers had to be translated in Washington, and in the correspondence which accompanies this, will be found an instant demand to know, "who is to pay for the translation of this document?"

35. Another labor, by no means trivial, which fell on me, was the careful examination of a very considerable mass of official Spanish MSS, some furnished by the Archbishop, some hunted up in the archives of the Surveyor-General's office, to determine whether it was prudent or not to offer them in evidence. They are almost all in a cramped Spanish hand writing, difficult, sometimes barely possible to read. I also spent hours and hours in Mr. Bancroft's library and that of Mr. Hawes hunting through a wilderness of Mexican books and official documents (unindexed), for every word and scrap, in print or MS, which might relate to the Pious Fund. I was rewarded for my labor by discovering mention of items received from the fund into the treasury, in the three Mexican Treasury Reports which we put in evidence. Mr. Casserly was entirely correct in the statement in his brief, under the caption, "The Pious Fund, its origin, nature, objects," etc., that

* That our claim would have surely been defeated if placed on the ground of a wrongful version of the Fund, so pertinaciously adhered to by Mr. Casserly, is explicitly admitted by Mr. Phillips in his Brief on Mr. Cushing's exceptions, page 9. "What" says he "is the claim now presented? It is not that the State (Mexico) has *wrongfully* taken property for which compensation is sought. "Such a claim would certainly be barred, for the taking was long prior to the "period of limitation. On the contrary, the present claim is: *an affirmation of the "legality of the action of the State in the taking*, for it seeks to enforce an obligation based upon it." [The italics are Mr. Phillips'.]

"This head is fully covered by the concurrent proof collated from the laws and archives of Spain and Mexico; from contemporary authors writing of what they saw, and great part of which they were, and from later authors of unquestioned authority, Spanish, Italian, German and French, from Venegas in 1734, to Duflot de Mofras in 1844, by Mr. John T. Doyle, one of the claimants' counsel, as the fruit of his research for years." (p. 2.)

36. I turn now to the labors of Mr. Casserly and of the gentlemen to whom he farmed out his share of the work for a portion of his share of the fee. As to these latter, I feel a delicacy in speaking with the freedom I would if they were present and all the circumstances of their employment and connection with the case known. I know neither of them personally. Mr. Wilson, I understand, is a gentleman of about thirty-five or forty, formerly a clerk in one of the Departments in Washington, and afterwards admitted to the bar. I never heard of him as holding any distinguished position in the profession, and supposed he was retained by Mr. Casserly merely as attorney of record to take charge of the routine business of the cause—filing papers, giving and receiving notices, keeping the register and the like—in deference to supposed Senatorial dignity. I do not recall any suggestion of Mr. Wilson's in the course of the proceedings as to the law of the case, the policy to be pursued, or anything indicating that he deemed his position different from this, unless his demand for the dates and proofs of the naturalization of the prelates be deemed such.

Mr. Casserly's opinion of his abilities was expressed soon after his retainer, as follows. On November 22d, 1870, I had written him *inter alia*.

"The 31st proxo. being the last day for filing memorials with the Commissioners, there is not a day to be lost. I find one letter from Mr. N. Wilson to the Archbishop on business. It is simply a request to him to appoint Father Hugh Gallagher his Att'y in fact. If the Archbishop had deemed it judicious to take this course he would have known how to do so long ago. I wonder it did not occur to Mr. W. that, from his not doing so, long since, the natural inference is, that he preferred not to. Mr. Wilson might better have sent the Archbishop a memorial to be sworn to with directions what to do, or enclosed him the rules of the Commission, that the memorial might be drawn up here. It was March 28th, I sent my telegram to you; April 26th, I wrote you at length, so that he has had this matter in hand (as I infer) six months. In the absence of any acquaintance with him, the fact that all he seems to have done is so little to the purpose, leads me to the inference that he is slow and inefficient. If this does him injustice you will correct me, I merely speak of appearances."

To which he replied, December 13th, 1870. "*Our Attorney is as you say, inert, if not stupid.*"

This it will be observed was Mr. Casserly's opinion of him, not mine. Such being the case and his alleged deficiencies having been discovered by him as early as December, 1870—before the memorial was filed—it will be in order for Mr. Casserly to explain why he continued him longer in the case and what reason existed for afterwards agreeing to compensate him so highly as he did. I have never heard such explanation; and if any part of his compensation is to be charged to my share of the fee, I am entitled to hear it.

37. As to Mr. Phillips who was retained subsequently, without possessing the eminent repute of Mr. O'Connor, Mr. Johnson, or Mr. Cushing, he is I believe a gentleman of mature age and experience and well reputed in Washington. The printed arguments which bear his and Mr. Wilson's signatures I presume to be his production, and they speak for themselves. I have been led to suppose that Mr. Phillips was retained to argue the case before the Commission and the Umpire, in the form in which it might be presented, and while he doubtless felt that the parties were entitled to his advice and counsel upon any questions upon which they saw fit to consult him during its progress, yet, from the period at which he was brought into the case, and the fact that there were, already three lawyers in it before him, he probably considered that the responsibility of management and initiative did not rest on him. He, accordingly, took no such part in it. He did nothing towards hunting up evidence, nor, ever to my knowledge, volunteered any suggestion as to the course to be adopted at any period of our progress. He took up the case as it was prepared for him, and made his argument on it. That is all.

38. As to Mr. Casserly's personal labors in the case, they provoke either a smile of derision or a blush of indignation, according to whether you view them in connection with his strutting and swelling before the newspaper reporters and "enjoying his great victory in the Pious Fund case," or demanding an extra per centage of the amount of the recovery as a compensation for them, at the expense of his associate who did the work. He treated the case from the beginning to the end with indifference, neglect and incompetency, save only in the abridgement of the printed argument of his colleagues which he furnished the Umpire. This misconduct began at the very beginning. From the time he was first informed of it, in 1853, down to its presentation in 1870—17 years. He made no study or examination of it, never read a line about it, and down to March 28th, 1870, when aroused by

my telegraph, had so completely forgotten its existence and his own connection with it, that, although the Commission had been in session for eight months in Washington, where he resided, and he had other cases before it, he never thought of presenting the claim. When he received my telegraph it was within two days of being forever barred by failure to present it!

39. Having presented it, in the form I telegraphed him to, a memorial had to be filed within nine months thereafter. This memorial was the pleading on the part of the claimant, and had to be prepared in conformity to requirements established by the commission in its rules. He knew that I had studied the case thoroughly and was conversant with the facts of which he had but the most vague and shadowy idea; that I was willing and able to prepare the papers, whereas, to use his own language, it was "a job he would gladly avoid," and that the rules of the Commission were essential to enable me to prepare it; for if he did not know these things he was incompetent, yet he never cared enough about the case to send me these rules, and by no process could I get from him a copy of them.

40. He got Mr. Wilson to draft a memorial which he proceeded to revise—"a job he would gladly avoid"—and he consulted with Mr. Wilson about it. As neither of them had at that time more than the most limited and imperfect information about the facts, their consultations must have been laborious and painful enough. The one "inert, if not stupid," the other engaged on "a job he would gladly avoid." It was the blind leading the blind, and they fell into the ditch of preparing a pleading, which, if used, would have been the sure forerunner of merited defeat. Yet they had been clearly warned against this error in my first letter (April 26th), wherein I explained the controlling legal reasons for shaping the claim as I had. Even when my memorial was received, duly verified by the Archbishop, ready to have the exhibit attached to it and be filed, Mr. Casserly still so little understood the case and the law that he went out of his way to introduce into it the suicidal statement that we *did not relinquish, but expressly reserved our right to claim the principal of the Fund*, thus practically retracting the grounds on which our claim was based. This was no casual error, but a very deliberate act, for it involved detaching the last leaf containing the verification, and rewriting and reprinting it with this obnoxious paragraph added and verifying it over again, and while I admit that it was not done with any intent to injure or give

away our case, I insist that it argues either incompetency or gross carelessness and neglect of duty.

41. Having exhibited his zeal in the cause by this vitious alteration of the memorial he proceeded next to display it by an equally maladroit attempt at proof. His idea was that we must prove the laws of Mexico, not by the statute book but by production of certified copies, (this before a mixed Mexican and American Tribunal!), and that the amount of the Pious Fund at the date of its seizure by Santa Anna, should be established by proving the various contributions of which it was made up. He accordingly sent off to Mexico for certified copies of the decrees of 1842, and finding in Washington a copy of Manuel Payno's work on Mexican finances (in which mention was made of one of the donations to the fund) he hastened to file it as evidence. The former of these proceedings, though puerile, was harmless, and I believe he recognized its absurdity in time, and did not put the copies of the laws on file. But the other mistake was dangerous. To attempt to prove the items of which the Fund was made up, and fail in any degree, might have led to very serious consequences, for our recovery would probably have been restricted to the items proved; and as the donations extended over a hundred years and our information about them was quite imperfect, we would not, probably, had been able, had we embarked in this mode of proof, to establish half of our claim, if indeed so much. I saw, at once, that this would never do, and wrote him promptly, December 30, 1870, as follows:

"It would be a great mistake for us to go into proofs of the various donations to the Pious Fund and endeavor to make out our amount in that way. We should never be able to prove the half, and the period limited for awards would elapse before we should have got half through. Besides, every trivial variation in the phraseology of the trusts in the different donations and bequests (whereof you will find there were many if you find at all), would be subject of controversy and comment, and in effect instead of claiming *one* we should be claiming *many different trusts*. It would never do at all. We must take the Pious Fund as a unit and as a historical fact. It would put in a copy of the Marquis of Villa Puente's deed, but merely as an illustration. I select it because having seen a copy of it (it is among the papers Fr. Croke sent Fr. Gallagher), I find the trusts as defined in it, just what we claim the Pious Fund to have been. Then having shown from historical works the origin of the fund and its character, I should go plump to the proof of the amount of the three items we claim," viz.: 1st, &c.

42. This was Mr. Casserly's first, last and only effort in the case down to the argument before the Umpire. From that time forth his labors practically ceased. He neither discovered, nor adduced, nor suggested any of the evidence in the case. After having, at first, evinced the greatest haste about sending an agent to Mexico to get proofs, he suddenly (and erroneously) decided that such a step was unnecessary, and he dated the decision just early enough to escape the inference of having made it only to avoid paying his share of the expenses of the mission. He offered no argument before the Commission, nor did he, to my knowledge or belief, ever make any pertinent suggestion as to how the cause should be treated, or how any of the difficulties which presented themselves should be overcome. His correspondence upon it was wholly wanting in attention, business punctuality and completeness, and so utterly barren was his conduct of all evidence of any study of, or reflection on the case, that my own conclusion was (and so remains) that he never read even the proofs which I filed in support of it, nor the argument of the counsel opposed to us. Of the various circumstances occurring in the course of the proceedings which lead me up to this conviction many, perhaps most, have now escaped my recollection, but the following proofs of it remain in a tangible shape. [In citing them I treat Messrs. Casserly, Phillips and Wilson all as one, and attribute the fault to Mr. Casserly whether committed by him or either of the gentlemen he employed. As he retained them without consulting me, and expressly to take his place and do his work in the case, so as to entitle himself to the merits of what they did, I regard him as responsible for their acts and omissions.]

43. Annexed to my argument in opposition to Cushing's exceptions was a copy of the deed of the Marquis of Villa Puente and his wife, in Spanish, with a very carefully made translation of it, *both in print*. So soon as I obtained the certified copy of this deed I transmitted it to Washington to be filed. Almost immediately after came a letter inquiring who is to pay for translating these documents? This inquiry would hardly have been made had the papers been read, for their identity with those already translated and in print would have been surely recognized.

Again, in my printed extracts from historical works submitted to the commission is contained Venegas' account of the license obtained by the Jesuits from the Viceroy to attempt the conquest of California. It is almost a literal tran-

script of the license itself, the text of which forms annex No. 1 to Mr. Aspiros' argument. Yet the expense and trouble of transcribing that annex in full for me was incurred, instead of simply noting its correspondence with my printed quotation from Venegas. Evidently the documents had not been read. The same is the case with his annex No. 2, which corresponds in like manner with my extract from Venegas, Vol. II., pp. 12 and 13.

His annex No. 3 is the text of the pragmatic sanction expelling the Jesuits from the Spanish dominions. Any one who had read the papers would have known that I possessed a copy of it, for I had quoted from it in my history of the fund. It is, in fact, contained in the *Novissima Recopilacion*, Vol. I, p. 183, as everybody acquainted with the subject knows, yet it was copied *in extenso* and sent out to me.

So of his annex No. 8. It is a copy of the Royal Cedula of November 13th, 1744, of which I had already sent them and filed a copy in print. His annex No. 14 is the Marquis of Villa Puente's deed. I had, months before, furnished both the original and a careful translation in print. His Exhibit No. 20 was a letter of Don Pedro Ramirez to the Minister of Justice and Public Instruction, of February 5th, 1842. I had furnished it with a translation, annexed to Archbishop Alemany's testimony. The identity of these various papers was never noticed. One or two of these things might have occurred by accident or misprision, but the number of similar blunders here enumerated, and all of the same character, compels me to ascribe them all to a common origin:—the papers filed were not read.

44. The omission to send me the copy of the Judgment in the case of Sa. Arguello's will (annex No. 16 to Mr. Aspiros' argument), and the substitution therefor of a grossly inaccurate synopsis of its contents I have already noticed. It was a shocking piece of carelessness and a further proof that no one in Washington read the papers.

45. Any review of Mr. Casserly's connection with the Pious Fund case would be incomplete which failed to include his contract with Messrs. Phillips and Wilson. This document never came to my knowledge until after the conclusion of the argument before the Umpire in April, 1875, but it is so characteristic of Mr. Casserly's mode of treating the case and throws such a flood of light on his deserts as an attorney and advocate that this seems to be the proper place to notice it, although here it is not strictly his indifference or incompetency which is to be remarked, but rather what the late

Judge Burritt termed his "prudent regard to his own interest," and I am compelled to add his disregard for everybody else's.

46. It has already appeared that Mr. Wilson had been retained in the case from the beginning (say April, 1870), and Mr. Phillips from some time prior to January 1st, 1872, for that is the date of his printed argument in reply to Mr. Cushing's exceptions. They had both been retained, and the terms of their engagement and compensation agreed on by Mr. Casserly without consulting me. In the summer of 1870, when he was in California, I proposed to him on one occasion that we should have some understanding about the fees in the case, but he repelled the suggestion rudely, and in a manner to show that further effort in that direction, would be followed by insult.

47. Sometime prior to June 1873, it seems he wrote the Archbishop a letter which I can not produce, and know nothing of the contents of, save from the reply to it which is as follows, and is signed by the Archbishop for himself and the other prelates.

"Hon. Dear Sir: We understand from you that it has become necessary to retain additional counsel at Washington in the prosecution of our claim against Mexico, growing out of the Pious Fund.

"We authorize you to do whatever you shall deem necessary for this object, and on such terms as you shall deem best. The compensation to be by a percentage of the Recovery, that is to say to be paid out of the Twenty-five per cent. of what may be recovered, which is agreed upon as compensation for counsel fees and current expenses in the case. And of said Twenty-five per cent., it is understood one-third shall be set apart for compensation of J. T. Doyle's counsel and expenses. It is our wish, however, that the business in Washington should continue under your general charge and direction, as heretofore."

48. This letter, I repeat, I knew nothing of until after the final argument of the case had been submitted to the Umpire. Mr. Casserly being, by it, allowed to employ additional counsel, *i. e.*, counsel in addition to those already employed in the case, instead of using it for that purpose made it the basis of a contract with Messrs. Phillips and Wilson, whom he had retained long before, by which he bound the Prelates to pay those gentlemen for their services, five per cent. each, of the amount to be collected, Mr. Casserly to retain the principal charge of the case in Washington, *but not to be required to do any work or render any service unless he saw fit!* This transaction is one of the most extraordinary I have ever known of. He

was one of two lawyers employed originally on a fee of twenty-five per cent. of the amount collected. Of that fee he could, of course on rendering the service, claim half, in the absence of any other mode of division agreed on. He does not like the work, or finds himself in a position wherein it becomes inconvenient and irksome, and so, for his own convenience, farms it out, a portion to Mr. Wilson, another portion to Mr. Phillips, engaging the services of these gentlemen in substitution of his own, and without consulting his associate; the inference is irresistible, that he was to pay them himself; and as they were engaged to do his share of the work, if their compensation was contingent, it should be paid out of his share of the fee. Many months afterwards without informing his original associate in the case, he obtains an authority from the clients to retain counsel in addition to those already employed, under color of which he gets up a contract with the gentlemen whom he had already retained, by which, while their services are distinctly to be in substitution for his own, (and he excused from working) the price of these services is to be paid, not by him, but by his clients, and, as he now claims, at the expense of his original associate, (myself) whom he never consulted on the subject, and who had done, and was doing the bulk of the work. Possibly some explanation exists of this remarkable transaction, but none has ever been vouchsafed to me, and I have been left to appreciate Mr. Casserly's conduct as exhibited by the contract itself. I need scarcely say what impression it has produced on me, for, without some explanation which will practically contradict its recitals, but one view of it is possible; a very ugly one.

49. The following is the text of the contract in question, as communicated to me by the Archbishop in his letter of April 26th, 1875, after the case had been finally submitted to the umpire. A copy of the letter of the Prelates above quoted is annexed to it.

"This agreement made at Washington, D. C. this 23d day of June, 1873, witnesseth, that J. S. Alemany, Archbishop of San Francisco, Thaddeus Amat, Bishop of Monterey, and Eugene O'Connell, Bishop of Grass Valley, all of the Roman Catholic Church in the State of California, by Eugene Casserly, acting under letter of authority, copy whereof is attached, have employed P. Phillips and Nathaniel Wilson, of the city of Washington aforesaid, attorneys and counsellors at law, to represent and prosecute against the Republic of Mexico, the claim which the said Archbishop and Bishops are asserting to what is known as the "Pious Fund." As compensation for services performed

" and to be performed by said Phillips and said Wilson, in present-
 " ing and prosecuting said claim before the American and Mexican
 " Joint Commission, recently in session in the city of Washington
 " aforesaid, or before the said Commission if it should be renewed,
 " or before any other tribunal, or either of the governments of
 " Mexico or the United States, if the said Archbishop or Bishops,
 " or their successors in office shall prosecute said claim before such
 " other tribunal, or before said governments, or either of them,
 " the said Phillips and said Wilson, shall receive each five per cent.
 " of any sum that may be finally received on said claim, whether by
 " compromise or otherwise. Said five per cent. shall be payable as
 " provided in letter of authority annexed by copy.

" The right to compromise shall at all times be within the power
 " of said Archbishop and Bishops and their successors in office on
 " such terms as they may determine.

" The expense of prosecuting the claim, including printing,
 " translations, procuring evidence and all other necessary costs,
 " are to be incurred only upon the determination of said Casserly,
 " and to be paid for by him.

" It is also understood and agreed, that the said Casserly shall
 " remain in the general charge and direction of the claim as hereto-
 " fore, *but shall not be bound to render any services except at his own*
 " *option.*"

J. S. ALEMANY, Archbishop, &c,
By Eugene Casserly.

T. AMAT, Bishop, &c.
By Eugene Casserly.

EUGENE O'CONNELL, Bishop &c.
By Eugene Casserly.

P. PHILLIPS.
 NATH'L WILSON.

50. Some additional circumstances remain to be mentioned which, though they do not seem to me material to the determination of the question at issue, may perhaps be deemed so by others. In consequence of the length to which this statement has already extended, I shall state them briefly, leaving details to be developed afterwards, if necessary.

51. *First.* In the Summer of 1870, while Mr. Casserly was in California, I desired to consult him about the case; to learn from him the forms and modes of procedure before the Commission; to lay before him in detail the information I possessed; to discuss the law of the case, and determine jointly on what might be called the plan of our campaign. I made many efforts to obtain from him an appointment for these purposes, but he was always too much engrossed by other matters, political and personal, to be willing to give the necessary time for the purpose. In our casual conversations I learned that he was as nearly if not quite as ignorant as my-

self of the course of proceedings before the Commission. He promised to send me its rules on his return to Washington, but never did so. On one of these occasions I said to him that I thought we ought to have some understanding about the fees in the case. He replied promptly, that that was a subject he declined to talk about, and the conversation, of course, ceased.

52. *Second.* As early as December, 1870, the Archbishop, on his return from Rome, expressed a desire to retain some lawyer of great eminence in the case; naming Caleb Cushing and Reverdy Johnson, and the expectation that Mr. Casserly and myself would furnish a contingent fee for the purpose, out of our twenty-five per cent. I assented promptly, so far as my half of it was concerned, and at his suggestion, wrote Mr. Casserly (Dec. 30, 1870) what I had done, in the hope of eliciting from him some similar response. The Archbishop also wrote him, as he told me, in the same sense as he had spoken to me. I received no answer to my letter, and presume the Archbishop was equally unsuccessful in getting one, so nothing came of it.

53. *Third.* Afterwards a question arose about advancing money for disbursements in the cause—printing bills, and travelling expenses of Father Hugh to Mexico, etc.,—and I then learned for the first time, that by the terms of our joint letter of May 20, 1857, these had to be advanced by Mr. Casserly and myself. I was much embarrassed, for by this time I had realized the dreadful disadvantages under which the suit was to be prosecuted. It was pending in Washington, where from physical infirmity I could not go. My associate there, through whom I had to operate, was so engrossed in other pursuits, so unacquainted with the facts and the law of the case, so inattentive and unwilling to receive instruction, and yet so meddlesome withal, as to be practically an obstacle, instead of an aid; twice already he had nearly thrown the case away, first, by omitting to present the claim, and second, by putting it on untenable grounds. He had shown a total failure to appreciate its merits or the law applicable to it, and was evidently possessed of the wildest notions as to the proper course of proceeding, such as claiming the property itself, and the proceeds of its sale; proving the public history and public law of Mexico by certified copies from her archives; establishing an aggregate of millions in the fund, by proving each separate donation to it, through more than a hundred years, etc.,—proofs wholly unnecessary, impossible to obtain, and quite likely to be injurious if obtained. He objected to appearing

in the case or connecting his name with it, and had retained to replace him a gentleman unknown to me, and with whom I was not in communication, but who he assured me was "inert if not stupid." I could not effectually instruct him by letter, for to letters he paid no attention and made no reply. The disbursements would necessarily fall on me to advance, as I was here where they had to be incurred, and I had not only no assurance that he would recognize his obligation to reimburse me, but a moral certainty that he would not; so that on being informed of this contract, binding me to advance disbursements, I found myself compelled either to expose Mr. Casserly's shortcomings and insist on his dismissal from the case, or refuse to comply with the demand, and if necessary, retire from it myself; for, as to the third alternative, of paying the money and doing the work, and sharing the compensation, if any, with Mr. Casserly;—in other words, carrying him as a mere dead weight and obstruction, where by refusing the use of his name, he declined even the office of a figure-head—I did not feel that I could afford to do it. I therefore told the Archbishop that I had never known of the contract to pay disbursements, and that if it were pressed, I would have to avail myself of the clause authorizing me to retire from the case, and so informed Mr. Casserly. The Archbishop, however, insisted on my remaining in the case, and took upon himself to make my half of the disbursements, I leaving him at liberty to curtail my half of the fee as much as he saw fit for doing so. Mr. Casserly, in this, as in the rest of the proceedings, evinced a more "prudent regard for his own interest" than I did. He neither acknowledged his liability to defray the disbursements nor did he decline to pay them. His absence from California rendered verbal explanations impossible, and in his correspondence he avoided the question. When it came up squarely in the case of sending Father Hugh to Mexico, he discovered that he had already decided, a short time before, that such a step was unnecessary. He paid some trifling bills for printing, etc., in Washington, but the bulk of the disbursements fell on the Archbishop, and the account has been left unsettled down to the present time, and so far as my knowledge and belief extend, in such a position that if we had lost the cause, he would have been free to treat the whole question of the terms of the original contract, and his liability to pay disbursements, as *res nova*.

54. During the summer of 1871, Mr. Casserly was again in California and again I frequently but always vainly sought a consultation with him on the case. His excuse for avoid-

ing it was always other engagements or occupations, political or personal. As a special effort to this end I addressed him a note (Sept. 25, 1871), shortly before he started to return to Washington, telling him that I proposed to ask the Archbishop to fix upon my compensation in the case, and inviting a conference before doing so. I thought that this, if anything, would arouse him to some attention, but my note was as barren of results as my verbal invitations had been, and elicited no reply. I was at the time, and down to the 17th of last September remained, quite unable to account for or comprehend Mr. Casserly's unwillingness to consult over the case, and especially his absolute avoidance of the question of fees—a subject, on which I had never known him chargeable with indifference. The excuse of want of time was pretty obviously an evasion, in view of his attention to all manner of petty political details and intrigues of county and ward politicians, the omission of which his Senatorial position would have excused, if it did not counsel. But on the day last mentioned, I believe I obtained the explanation of it, for in a conversation held that day, preparatory to our appointment with the Prelates for the 18th, he told me that he had totally forgotten our original agreement with the Archbishop in 1857. Such forgetfulness, if it existed in 1871, as it probably did, would account for his peculiar conduct. For supposing himself to have been first employed in the case when I telegraphed him to present the claim, in March 1870, his position was that of a U. S. Senator, charged with the management of a great cause, of an international character, not strictly as counsel, but rather as a sort of director in chief, with attorneys and counsel under him, whose labours he had only to supervise and direct. Such a person was evidently more important and could demand higher fees than any of the counsel employed, and at the same time might excuse himself from all detailed study of the facts or the law or other merely professional labour. He could give directions, supervise, meddle, find fault, hold interviews with the reporters and otherwise act the great man;—assume all the credit of a good result if achieved, and disclaim responsibility in case of defeat. A position so flattering to his self love was not to be lightly sacrificed, as he instinctively felt it would be by entering into any serious consultation with me. Such a conference would have revealed at once his entire ignorance of the facts of the case, the theory on which it was prosecuted, the points of law involved in Mr. Cushing's exceptions, etc., and his vanity and love of ease being both

against any consultation, he determined to avoid one. The same reasons probably operated to make his correspondence on the case so insignificant and unbusiness like. To Messrs. Phillips and Wilson he could make a good appearance on the basis of my full and instructive letters to him: but to enter into any detail in his correspondence with me would have disclosed his total ignorance of the case. In the very few letters written me in 1870, wherein he had ventured to express any ideas on the questions involved he had fallen into such serious errors that he probably concluded he had better write no more on the subject beyond mere generalities.

61. In October, 1871, just after Mr. Casserly's return to Washington, I learned verbally from the Archbishop that he had received some communication from him, as to the employment of associate counsel in the case, naming Mr. Phillips, I believe, as the gentleman selected. The gross discourtesy of taking such a step without my assent will not fail to be observed by any one accustomed to the amenities of professional intercourse; it can only be accounted for (and even so imperfectly) by the supposition that Mr. Casserly really had forgotten our original joint retainer, and considered his position in the case rather that of a commander in chief, who had no occasion to consult one of his subordinates as to the employment of another. I overlooked it for the same reasons which led me to overlook many similar acts of his. The Archbishop, doubtless feeling that my early offer to put my whole fee at his disposal for the employment of associate counsel, was intended to apply to the case (as he expressed it) of "some great lawyer of established reputation for extraordinary ability and success," and not to that of a gentleman whom I might regard as my own equal in the profession, and also having regard to the changes of circumstance which had since occurred, desired me to let him know to what extent he might encroach on my half of the original fee for this purpose. At his request I replied to him in writing, Oct. 20, 1871, and wrote as follows:

"Most Rev'd. Archbishop: I have already expressed to you
 "my regret that we were unable while Mr. Casserly was here
 "to discuss in a personal interview the litigation for the Pious
 "Fund. In view of the proposed retainer of counsel in
 "Washington,—a gentleman with whom I am unacquainted—I
 "think it desirable that my compensation in the case should
 "be provided for.

"If you will be kind enough to confer with Bishops Amat
 "and O'Connell, anything that you and they agree upon will

"be satisfactory to me, on the sole condition that my compensation is not to be less than that of any of the counsel on our side employed. Having given much time, attention and labour to the investigation of the case—quite as much I am sure as any other,—and having collected most of the information we possess about it, I would not assent to the inferiority implied in the acceptance of a fee less than that allowed to any of my associates. If this condition seems to you just, you need but write me a line that you will see that my compensation shall be rated as high as that received by any other of the counsel on our side, and take your own time to arrange amounts etc. with them."

It was, I presume, under the authority contained in this letter that the Archbishop sent Mr. Casserly that, annexed to his contract with Messrs. Phillips and Wilson, wherein he fixed $\$ \frac{1}{3}$ per cent. as the *minimum* of my fee. He did not, however, tell me of it, nor send me any reply, and I am not now able to recall when or how I first learned that Mr. Phillips had been actually retained in the case.

56. *Fourth.* On April 12th, 1875, after the disbursements had all been made and the argument of the case before the Tribunal concluded, and when I supposed my labors probably ended, I sent to the Archbishop a copy of my history, briefs, etc., bound together, and with the volume a note, requesting his decision as to what was to be my compensation. [I have no copy of the note, but this must have been its purport.] In reply he wrote me, April 26th, 1875, as follows:

"I welcome with much pleasure and gratitude the precious little volume on the Pious Fund of California, which you sent me with your esteemed favor of the 12th inst. I will keep it, as a work of special merit, in the archives of my diocese, and I will transmit it with care to my successors, who will no doubt appreciate as well as myself the talents and ability with which you have defended the rights of the Church in California. I am sure your children (and theirs) will ever treasure up the precious little volume with equal appreciation, and will feel proud of its author.

"Regarding the item alluded to in your mentioned favor, I do not know what better thing I can do than to enclose you a copy of arrangements made some time since, which may, perhaps, be not fully acceptable to any of the parties employed in the case, but which a little patience may make them be so. I cheerfully acknowledge that you have labored very hard and very ably, but as it became necessary to employ also able men in Washington, these had to receive something; as it is, I think that your contingent fee is greater than that of any other."

57. In this letter was enclosed a copy of the contract between Mr. Casserly and Messrs. Phillips and Wilson above referred to, with the annexed letter of the prelates. I answered the Archbishop's letter the same day, as follows :

"In reply to your favor of this morning, I have to say that the provision for my fees in the Pious Fund case, made spontaneously by yourself and the Bishops, is entirely satisfactory, and to do justice to my own feelings I must add that the appreciation you have so kindly expressed of my efforts is more grateful to me than any pecuniary compensation."

At the time of writing that reply, and thenceforth down to quite recently, I understood the Archbishop's note, to which it was an answer, to be a delicate intimation *that he intended to charge me one-third of my fee of 12½ per cent. for making my half of the disbursements.* I will not deny that I thought the mulct large, but I had promised to abide by his decision in the matter, and I think my note shows that I did so loyally, and without wincing.

So understanding the Archbishop's letter, I remained under the belief that the 25 per cent. appropriated for counsel fees was to be divided as follows :

Mr. Casserly's half :—

To Mr. Wilson	5 %
To Mr. Phillips	5 %
To himself	2½ %
	<hr/>
	12½ %

My half :—

To the Archbishop	4⅓ %
To myself	8⅓ %
	<hr/>
	12½ %

Making up the whole twenty-five per cent., and under that belief, when Mr. Casserly asked me, in a casual conversation last Spring, what my fee in the Pious Fund case was, I replied 8⅓ per cent.

58. In the first half of September last I learned from the Archbishop, at first obscurely, afterwards more clearly, that I had misunderstood him, and that in communicating to me his letter to Mr. Casserly, and the contract between the latter and Messrs. Phillips and Wilson, he did not mean to signify that he appropriated to himself one-third of my half of the fee, but merely to let me know the *minimum* reserved for it, in the event of employing additional counsel. This being so, I claim, of course, to be entitled to my half of

the original fee of 25 per cent. unimpaired; for if not diminished by the Archbishop's act, it certainly has not been by that of any other, for he was the only person authorized to do so.

59. The affair then, at present, stands thus: The cause having been decided in their favour, the claimants admit their liability to pay the fee originally agreed for. The disbursement of this sum having been left by the other prelates to the Archbishop, he has already paid ten per cent. to Messrs. Phillips and Wilson, and desires to pay the remaining fifteen to Mr. Casserly and myself as soon as he knows in what proportion to divide it between us. But, as our claims to it conflict, and he is unadvised as to our respective rights, he requires us preliminarily either to agree on them, or to have them determined contradictorily. Practically it may be said, he declares himself a mere stake holder, having no interest in the funds in his hands, and calls on us to interplead as to our respective rights to them.

MY CLAIM.

60. If the fees were to be divided between the counsel employed, in proportion to the merit and value of their respective services, it is demonstrable that I might justly claim from three-fourths to four-fifths of the whole. Any lawyer who examines the proceedings carefully can come to no other conclusion; for independent of the fact that I performed fully three-fourths of all the labour in the case, I may without vanity claim that without my individual services—I mean services to which no other person than myself contributed, and some of which no other than myself could have rendered—the cause would have been infallibly lost. I claim therefore to have saved the Pious Fund, and that merit I will not share with any one. I saved it first, by my telegraph of March 28th, 1870, which caused the claim to be presented, when it was within two days of being outlawed by the neglect of my senatorial associate to do so. I saved it secondly, by the form of action I adopted, and the grounds on which I put the claim, therein distinctly overruling Mr. Casserly, and saving the case from loss by his incompetency, as I had before saved it from loss by his negligence. I saved it thirdly, by the diligence with which I read and studied and discovered all the evidence, invented the theory, and produced the proofs on which it was recovered. It is in this connection that I claim to have done what no other could have done for it, for within two weeks after I obtained the rules of the commission, and learned the forms of pleading required, I had my memorial in the printers' hands,

accompanied by a "*brief history of the Pious Fund*" from its commencement in 1697, down to its absorption into the Mexican Treasury in 1842, so complete and so well sustained by historical citations, as to pass entirely unchallenged by our opponents, and to be accepted both by them and the court, *as history*. This was, as Mr. Casserly truly said, "the result of my research for years," and as no other had made such research, no other could have produced such result.

61. But I have purposely limited my claim to one half of the original fee, (leaving the other half to Mr. Casserly, and the gentlemen to whom he farmed out his duties,) because I have no desire to profit by his omissions or deficiencies, or to gain anything he might have earned by faithfully fulfilling his original engagement. As his clients have made no reclamation for his breach of duty to them in omitting it, I overlook his misconduct to me, with its attendant enhancement of labour and responsibility. The simple consequence I do claim from his failure to perform what he contracted to do, is that the sums he agreed to pay to other gentlemen for promising to do it for him, shall be charged to his share of the fee; and as he never consulted me about their employment or rate of compensation, and stipulated for his own exemption from labour as the price of their engagement, I do not think I shall be deemed unreasonable in this demand. But in thus omitting to claim a pecuniary advantage from his refusal to act, and his arrangement to substitute the services of other persons for his own, I am not to be deemed to acquiesce in the doctrine of vicarious performance of professional services, nor in the low and merely mercenary estimate of professional duty, which they imply. Such arrangements are not only contrary to the canons of legal and moral duty, but degrade the profession to the low level of mere trade or speculation, wherein the only aim is to buy at the lowest, sell at the highest and make the most profit possible, and I regard it as the duty of every lawyer who respects his profession and means to be respected in it, to protest against them.

62. In concluding this statement, I must in justice to myself, show how this unseemly controversy arose, and that I have not volunteered an exposure so damaging to my late associate. It came about as follows: One hundred and twenty odd thousand dollars having been received by our clients, on account of the judgment, and ten per cent. thereof been paid to Messrs. Phillips and Wilson, Mr. Casserly and myself, at the Archbishop's request, met him and Bishop O'Connell, to settle the account of disbursements and the distribution between

us of the remainder of the twenty-five per cent. appropriated for counsel fees,—say fifteen per cent. of the whole.* The interview took place in my office, on the 18th of September last. The Archbishop's account of disbursements, amounting to some \$2,400, all minutely enumerated, had been already sent in, and Mr. Casserly produced the following loose memorandum of those paid by him, viz :

“ Disbursements, Pious Fund:—

“ Traveling expenses to and from Washington...\$417

“ At Washington—hotel..... 128

“ Judd & Detweiler, printing, etc..... 410

“ E. C., E. & O. excepted.

I was asked how much of the 25 per cent. for lawyers' fees I claimed, and replied one-half, or $12\frac{1}{2}$ per cent. Mr. Casserly announced his claim at $6\frac{2}{3}$ per cent., being the residue of the 25 after paying 10 per cent. to Messrs. Phillips and Wilson and $8\frac{1}{3}$ per cent. to me. I referred to the original contract of 1857 in support of my claim, and he said he “took the letter of the Bishops as his starting point.” Some discussion ensued in which we failed to agree. I offered a compromise, he rejected it. I then said there is nothing left but “to leave it out,” and proposed to call in some friend to decide between us. He said he would leave it to the three Bishops. I objected that that was a proposal to leave it to arbitrators all named by himself and the persons on whose act he based his claim; and renewed my proposal of an indifferent arbitrator. I was willing at that time to call in any of our contemporaries at the bar, and submit the question to him, off hand, on our verbal statements. It need not have occupied an hour nor occasioned any anger. But Mr. Casserly would not assent. The most I could elicit from him was a grudging promise to consider my proposal of a friendly arbitration, and with that promise he left me in a good deal of a huff. I have never met him since.

Within a day or two I received a friendly letter from the Archbishop counselling conciliation, etc., and making a suggestion, in consequence of which I sent Mr. Casserly the following :

John T. Doyle to Eugene Casserly, Sept. 21, 1878 :

* Just here comes in one of Mr. Casserly's minor blunders. Twenty-five per cent. of the *net* receipts, after paying disbursements, was appropriated to counsel fees. He disposed of ten per cent. of the *gross* receipts in favor of Messrs. Phillips and Wilson. The difference is but a few hundred dollars, and for the purposes of argument may be overlooked, but it is characteristic of the carelessness which marked all his proceedings.

"The Archbishop has sent me a letter, inviting submission of our difference about the 4 1-6 per cent. of the Pious Fund to the three Bishops, or two of them, aided and counseled by Judge Morrison or Judge Burnett. I presume he has sent the like to you. I have written him that I hope to be able to agree with you on some other and less troublesome mode of settlement. I think we ought to endeavor to do so, and have offered in the way of compromise, to yield you sixty per cent. of the disputed amount. That you rejected, and I then offered an arbitration by an indifferent person who is uncommitted to any opinion on the matter. If you find this last objectionable will you tell me why, and propose something else?"

"The convention meets next Saturday and time is short for doing anything. I therefore hope to hear from you promptly."

I awaited a reply to this for several days, and had about given up expecting one, when on the 27th of September I received the following. Its evasive character did not at first strike me; for reading hastily so long a story of appointments with the Archbishop, my note seen accidentally, etc., I supposed it was in good faith intended to account, and did in some way account for his delay in answering. It appears, however, on further examination, to be a mere decoy, intended to draw me into incautious explanations or concessions, by pretending not to understand my previous note. Here is the document:

Eugene Casserly to John T. Doyle, Sept. 26, 1878.

"Your note was accidentally seen by me, having been thrown into my office after hours. I reciprocate the spirit it expresses. I quite agree with you that this difference between us should be settled without the intervention of third persons who know little or nothing of the merits of the matter; and could not become informed of them except at great expense of time and trouble, involving much delay.

"I do not understand what you say as to your having thrown off sixty per cent. of the difference between us. I have not your note by me, but I think I state your words correctly. I should have answered your note sooner, but that I wished to see the Archbishop. I begged him to give me an appointment between 7 and 9, P. M., when as I understand he is less occupied. He called at my office, but I did not see him. I had a note from him however, the same day, in which he said he had an engagement which obliged him to be out of town for two or three days, but would see me on his return.

"This will explain my omission to answer your note sooner.

"I regret to leave matters between us in such an unsatisfactory condition on all sides.* I presume, however, after the convention is organized and the committees appointed, there will be a recess of several days, perhaps, a series of recesses, during which I can be here to attend to my private affairs. I write this amid many annoyances and interruptions, which have doubtless made me forget some things."

I accepted this wordy epistle in simple good faith, and replied at once, as follows :

John T. Doyle to Eugene Casserly, Sept. 28th, 1878.

"I was glad to receive your note of yesterday, holding out a prospect of arriving at a settlement of our difference by fair and friendly discussion or at least in some amicable way.

"As you do not appear to have comprehended my oral suggestions about it, I think it may be well to put some ideas in writing which you can reflect on at intervals and thus see both sides of the case.

"In 1853, the Archbishop first consulted us about this business while we were equal partners in business. That began our connection with it. In 1857, he formally employed us jointly, and we undertook the case on a contingent fee of twenty-five per cent. of the collection. From this state of things, I infer that the result was, that we were to divide the work and the fee between us—equally, of course. The labor might not indeed be divided with absolute equality, for that is impossible, but supposing each did his work, the fee would be equally divided, twelve and a half per cent. to me, and the like to you.

"In 1870, when the suit could be and was brought, I was still in practice and could do my share of the work, and accordingly I did it. You had, however, quit practice and gone into the Senate, which position, you considered disabled you from acting save in the way of consultation and the like, and to supply your place you employed Messrs. Wilson & Phillips. They replaced you, and by inference were to be paid out of your share of the fee.

"This inference is strengthened by the fact, that you employed them and fixed their compensation without consulting me; and when, on two occasions, once by note, of which I have a copy, and once orally, I suggested a conference on

* As the convention met on the 28th, he must have left for Sacramento the day and about the same hour that this note was delivered to me.

“ the subject of fees, you declined it. Such declension could
 “ only be justified on the ground that it was none of my busi-
 “ ness what you choose to pay the gentlemen you retained to
 “ take your place.

“ You are, I find, in error in supposing you employed Messrs.
 “ P. & W. under the authority of the Archbishop's letter
 “ to you of June, 1873. They were both employed by you
 “ before that date. But about that time they asked you for
 “ some recognition of their position from the Bishops, and it
 “ was to that end that you put the contract in writing and
 “ annexed the letters of the prelates as evidence of your
 “ authority. (*)

“ The expression in that letter, that eight and one-third per
 “ cent. had to be reserved to pay me, was, as I look at it,
 “ merely a restriction on your authority, and fixed the *mini-*
 “ *mum* of fee they wanted to pay me, but did not undertake
 “ to enlarge your compensation beyond the original amount.
 “ Doubtless, they supposed that you and I were in communi-
 “ cation over the subject, whereas, I did not hear of their
 “ letter until after the whole mischief was done.

“ Under our original contract, therefore, it seems to me I
 “ was entitled to half the twenty-five per cent., and was
 “ bound to do half of the work, as nearly as professional la-
 “ bor can be apportioned. I do not think it can be denied
 “ that I fully discharged my obligation, and I therefore consi-
 “ der myself entitled to the fee originally stipulated for.

“ In our conversation last week, I offered in the way of
 “ compromise to stand one-half of Mr. Wilson's charge,
 “ leaving the other half of it and the whole of Mr. Phillips'
 “ to be borne by you. This would work out as follows :

My half of the original fee.....	12½%
Less one-half of Wilson's charge.	2½%

Would leave me.....	10%
---------------------	-----

Your half of the original fee.....	12½%
Less one-half Wilson's fee.....	2½%
Less Phillips' fee.....	5
	7½%

Would leave you.....	5%
----------------------	----

“ The difference between twelve and-a-half per cent.
 “ claimed by me, and eight and one-third per cent. which you
 “ would cut me down to, being four and one-sixth per cent.,

(*) This was my conjecture based on a comparison of dates, until Mr. Casserly denied it.

“ this offer was, practically, to yield sixty per cent. of the
 “ sum in dispute between us, to you, and take forty per cent.
 “ myself; for two and-a-half is just six-tenths of four and
 “ one-sixth. Such an offer if not accepted is of course with-
 “ drawn, but I cannot help thinking that you rejected it too
 “ hastily. It seems to me you lost sight of the fact, that
 “ there is an inconsistency in employing others to replace you,
 “ or to do the work which under the original agreement
 “ would have fallen on you, and claiming that their compensa-
 “ tion should be paid without correspondingly diminishing
 “ your own.

“ This is an outline of my views. You may have a satis-
 “ factory and conclusive answer to them, for aught I know,
 “ and I am very willing to be convinced that I am wrong; but
 “ obviously this must be arrived at by some reasoning con-
 “ sistent with all the facts of the case, and I would be glad
 “ to have you set down in writing how you arrive at your
 “ conclusion. If we cannot agree *in toto*, perhaps we can in
 “ part, and every element of controversy which is eliminated
 “ is so much gained. We may find in the end our differences
 “ reduced to a *minimum* which we can leave out to some friend
 “ to decide between us. Consider it, and let me hear from you
 “ as early and as definitely as may be.

On re-examining this letter it still seems to me to be, what I intended it for, viz: a frank, friendly and courteous explanation of the grounds of my claim. I am unable to find in it anything harsh or technical. There is not a word of censure of Mr. Casserly's numerous blunders in the case, which had so augmented my labour; nothing said of the gross discourtesy of bringing in associate counsel without consulting me; nothing of the impropriety of using the bishop's letter authorizing the employment of *additional* counsel, as an authority to employ a *substitute* for himself, or to contract for the payment by others of one whom he had long before employed for his own convenience; and nothing of the disingenuousness of concealing from me these various arrangements; yet all these matters had then come to my knowledge, and might properly have been observed on.

This letter remained unanswered till late in the afternoon of October 7th, when I received the following:

Eugene Casserly to John T. Doyle, Oct. 7, 1878:

“ I have read yours of 28th ultimo twice and again to be
 “ sure that I did not misunderstand you. I find, however,
 “ that you are bent on having your demand according to the
 “ harshest technicalities of the law. As you have placed

"yourself on this footing I am compelled, for my own protection, to notify you that I deny alike your alleged facts and your conclusions of law."

To this amusing plea of the general issue, served at the close of the ninth day, I immediately replied at once, as follows :

John T. Doyle to Eugene Casserly, Oct. 7, 1878 :

"Just received your denials ; you are unnecessarily technical, but no matter. When two men differ about a thing of this kind, some one must decide ; either one of themselves or some third person. As a decision by either you or myself would not be likely to be satisfactory, don't you think we had better leave it to some third person ? And should he not be some one uncommitted to any opinion or conclusion about it ? I confess myself unable to think of any other or better way to settle it. If you can, I would gladly learn it. Supposing you would see the propriety of a friendly arbitration, I wrote you at length stating how I put the case in my favor so you could be prepared to meet it and show what the answer to it is. If you would define your views with equal frankness it might help to clear up our points of difference.

"I am waiting now over a fortnight for your reply to the question whether you will submit to arbitration or not, or whether you will propose any other mode of settlement. I really think you ought to give me a definite answer."

To this I received no answer whatever. After waiting three weeks for one, I sent him the following :

John T. Doyle to Eugene Casserly, Oct. 28, 1878 :

"Over a month ago I proposed to you a friendly arbitration of our differences as to the Pious Fund fee ; you promised to consider it ; but, though several times since asked for a reply, you have given none. I ask you to consider whether this is consistent with even ordinary civility, and whether it is desirable to introduce the contrary element into our controversy.

"Shortly afterwards, in order to be able, without inconvenience, to give you the time to refresh your memory about the facts, which I foresaw you would require, I suggested to the Archbishop the payment to each of us of the amount conceded to be due him, leaving our controversy as to the remainder for future and more deliberate determination. This suggestion he approved, but before complying with it desired your assent, and more than three weeks since, as he

"tells me, wrote you for it. The only answer he has received
 "is an expression of your surprise (which he construes to be
 "an objection) and a statement that you require time to look
 "up your papers, etc., as to the point in dispute. This demand
 "for time, on your part I had foreseen, and the object of my
 "proposal was to enable me to assent freely to it, which I, of
 "course, expected to do. Perhaps this was not understood by
 "you; but now that it is, I ask you to consider whether your
 "objection to my receiving the 8½ per cent. you deem
 "my fee is either just or wise. It is not just because it takes
 "advantage of my necessities and tends to coerce my assent
 "to your demand, not because it is right, but because I am in
 "straits for money. And it is not wise, for the reason that in
 "such cases all injustice, like all rudeness, is unwise. When
 "people are already enemies, each prepared to do the other all
 "possible injury, such means are resorted to because they are
 "essentially hostile, and injury is the thing sought; but to
 "introduce them into a controversy between friends or
 "brothers, especially into one so easily capable of fair settle-
 "ment as ours, and where a friendly arbitration is offered, is
 "shocking.

"Lest you may not have considered the matter from this
 "point of view, I write this to show it to you in the light in
 "which it appears to me, and in which, I am persuaded, it will
 "be viewed by disinterested parties. If hostility is to arise
 "between us, I desire to be clear of the responsibility for
 "such result, which I most deprecate and desire to avoid.
 "Inconsiderate action, like hasty words, may be excused, but
 "you cannot ask any man to submit tamely to deliberate
 "wrong, or deliberate insult.

"I hope you will reply without further delay to my pro-
 "posal, to have our controversy arbitrated by some disinter-
 "ested and uncommitted person; and, if you desire time be-
 "fore proceeding further in our settlement, withdraw your
 "objection to my receiving a payment on account of whatever
 "I may prove ultimately entitled to."

This letter also remained unanswered. As Mr. Casserly's
 office is immediately opposite mine, in the same street, he
 could easily have sent a message, if any accident caused him
 to defer writing. His silence, therefore, was clearly inten-
 tional.

About the eighth or ninth of November, another person in-
 tervened and urged me for family reasons, etc., to yield the
 point and submit to the arbitration of the Bishops, as proposed
 by Mr. Casserly. I pointed out the inconvenience of an arbi-

tration by three gentlemen residing five hundred miles apart, and the unfairness of one party naming all the arbitrators, and selecting persons on whose act he founded all his claims. Nevertheless I agreed to take them, only stipulating that the submission must be in writing, and the award final, and that Mr. Casserly should first send me an answer to the proposal I had made him. The importance I attached to these conditions seems to have been overlooked, for on November 13th I received from the intervenor a note, date the 12th, announcing Mr. Casserly was willing to leave the matter to the three Bishops, but had only made up his mind to it so late as to be unable to write. I immediately sent the following answer :

"Your note of yesterday I found on my desk this morning. I think you misapprehend the matter, at least its present shape. You are anxious to avoid a family quarrel, so am I, and will sacrifice money to avoid it. But I have written Eugene several notes, all respectful and polite, to none of which has he replied. His refusal appears intentional and insulting. The money in dispute is a subordinate matter, and can be settled without difficulty, whenever we get that far, but at the present I am awaiting an answer to my letters.

"Rudeness and insult infallibly lead to quarrel. The way to avoid *it* is to avoid *them*. If we were to settle the pecuniary question to-morrow, the insult would still rankle, and the quarrel be only the more bitter. It is better, therefore, to conclude the whole together, or if that cannot be, let the quarrel be (nominally, at least) over the money. You understand, of course, that the question I await an answer to is whether he will or will not consent to a friendly arbitration of our difference about the fee by some impartial person or persons. Until that has been answered, one way or the other, I really do not see how we can get any further.

* * * * *

On November 18th I received the following :

Eugene Casserly to John T. Doyle, November 18, 1878.

—— "seems to be wiser than we were, or at least than I was in the matter in controversy between you and me. As ——— tells me you are satisfied to leave the matter to a friendly arbitration of the Archbishop and the Bishops, I am willing to do the same.

"I am, as you know, very much engaged with matters of paramount importance in the convention. I propose, however, to attend to the business as soon as possible, with a view to a speedy settlement, for which I am as anxious as yourself."

Mr. Casserly felt instinctively that he stood a better chance with the Bishops than with any other arbitrators; that they would never appreciate fully the insignificance of his labours, nor the serious character of his repeated blunders in the case. That having, as parties to the transaction, overlooked the improper use of their letter of authority, they would be likely to do the same as arbitrators, and that above all, he could plead that he had been mislead by, or had misunderstood their letter,—his favorite plea—and so from the first he had proposed and stuck to the Bishops as arbitrators. Having for two months rudely refused any reply to my proposal of an impartial arbitration, and been now advised that he had only to answer it to secure the acceptance of the arbitrators named by himself, he disingenuously endeavored, under the form of such a reply, to make it appear that I was the proposer of the gentlemen whom he had practically forced on me. I was naturally indignant at this piece of duplicity, and while complying with my promise to accept the arbitration, repelled the suggestion that it was of my proposing.

I replied November 20th, as follows:

John T. Doyle to Eugene Casserly, November 20, 1878.

"Your note of 18th inst. was handed me the same afternoon. I will submit the disputed 4½% to the determination of the Archbishop and the Bishops, substantially as proposed in the note of the former to me of September 19th or 20th last; the details to be agreed on, and the submission to be in writing, and signed by December 1st. To accommodate your engagements in Sacramento, I will add that the submission being signed, the proceedings under it may be suspended till after the close of the convention.

"But I cannot permit the origin of this agreement to rest on the basis erroneously assumed in your note of 18th. It is an arbitration I neither proposed nor am content with. I assent to it at ——'s request, and after vainly striving for two months to elicit from you an answer to my proposal of an arbitration by some disinterested and uncommitted person or persons.

"When one has before him a proposition which he is afraid to accept, ashamed to reject, and which he cannot dodge, he is apt to take refuge in silence. I have frequently and always courteously requested you, during the past two months, to say whether you would, or not, submit our controversy to an impartial arbitration. You have made me no answer; and I cannot, by passing over the assumption referred to, in your last note, contribute to protect you from

"the inference which others may feel inclined to draw from your silence. The plea of want of time to answer, which the Archbishop's charity suggests, is negatived by the promptness with which you have decided to accept the arbitration of three gentlemen, to each of whom you can urge the argument that he cannot decide against you without putting himself in the wrong, for his letter is the "starting point" (your own words) of your claim. The acceptance of such an arbitration is a question over which an honest mind, especially if possessed of any delicacy of sentiment, might well hesitate.

"Please let me know with whom I shall communicate, with reference to the form of submission."

On the 27th of November the following reply (dated 23d) was brought to my office:

Eugene Casserly to John T. Doyle, Nov. 23 (27), 1878 :

"Your extraordinary letter of the 20th inst. is received. Its contents are such that to understand it I had to read it over twice, and I am not sure that I understand it now. For months, as you have been saying, if I recollect aright, you have pressed for an arbitration of the differences between us in regard to the division of the fees in the Pious Fund.

"Wholly unknown to me ——— saw you with the best of motives for the peace of two families, and informed me that all you wanted was a settlement and would agree to an arbitration, and so expressed yourself. ——— urged me at once to write you, agreeing to an arbitration of the Archbishop and Bishops O'Connell and Mora. I so wrote you at once. I took it for granted, of course, that arbitration would be satisfactory to you, and the arbitrators not less so. Judge my astonishment at receiving your extraordinary and offensive letter of the 20th inst., in which you style the proposed arbitration as one which 'you neither proposed nor are content with,' and proceed to intimate that what you wanted was 'an arbitration by some disinterested persons.' In other words you object to an arbitration by the three persons who, next to you and me, are the best informed* in the whole world as to the facts of this unhappy con-

* Trash! The Memorialists were the Archbishop and Bishops Amat and O'Connell, all of whom were absent, in Rome, when the proceedings were commenced, and Mr. Wilson retained. Bishop O'Connell took no part in the proceedings except to execute a power of attorney and Bishop Amat had died and been succeeded by Bishop Mora, after the judgment was rendered. So that the Archbishop was the only one of them who knew *anything* about the matter. When he reads this *exposé* he will probably be surprised to find how little even he knew of the early troubles occasioned by Mr. Casserly's blunders.

"troversy, and whose character is the best guaranty of their entire impartiality.

"I confess I cannot understand your course, nor can I reconcile it with your repeated declarations. Your complaint has always been that I did not assent to your demand for an arbitration. Now, when one is offered to you, you are full of angry complaints and write me a letter, so resentful and offensive to me personally, that I might well decline to answer it in any way. In your cooler moments you will regret having written it. Your proposal that I should submit to the three what you call 'the disputed four and one-sixth per cent.' is declined for very obvious reasons, which you understand as well as anybody, and which I shall not characterize.

"Since I went to the convention the pressure on my time, watching night and day many all important matters, including the appropriations for the orphans and the exemption of church property from taxes, has kept me busy day and night. I hope you will not take it ill, if I say that, driven as I am at the convention with scarce a moment for rest, I cannot possibly answer fully your long letters. Twice I undertook to and twice I failed, and had to give it up. As I could not answer you fully the safe course for me, and the only one, was not to answer at all. Just as soon as I can see my way clear consistently with my duties here to subjects of paramount importance, I shall notify you when I can attend to the arbitration."

Detesting cant and hypocrisy as I do, this disingenuous letter, I regret to say, put me out of temper; I answered it Nov. 30, as follows:

John T. Doyle to Eugene Casserly, Nov. 30th, 1878.

"Your letter dated Nov. 23d, (at no place) was brought into my office on the 27th. I take the earliest leisure moment to reply to it.

"There is nothing ambiguous in any of my letters, and people will not readily believe you have failed to understand them. To be done forever with that recurring excuse, I shall try to express this very plainly. I have not 'pressed for an arbitration' nor 'complained that you did not assent to one.' I offered you an arbitration just as I had offered a compromise, in the hope of avoiding an unseemly litigation, and to make certain if such arose that the fault should not be mine. You rejected the offer of compromise and promised to consider the other. For two months I pressed for an answer to that proposition, and you remained silent. The

“excuse of want of time caused by engagements in the convention, I regard as frivolous, for you had several weeks to consider and determine before you began to attend its sessions, and a telegraph of five words was all the answer needed. You readily found time to write a very adroit answer as soon as you learned that I had been induced to agree to arbitrators of your own nomination.

“You did not ‘take it for granted that arbitration would be satisfactory to me,’ you had it from my own lips, and repeatedly confirmed in writing; nor had you any right to take it for granted that the arbitrators were no less so. It was just the artfully worded statement of that false assumption in your note of the 18th, that provoked the latter part of my reply. In our interview of Sept. 18th, you had offered to leave the matter to the Bishops, and I declined, pointing out the impropriety of a reference to those whose letter you had just before declared you took as your ‘starting point.’ It was then that I proposed, an impartial arbitration which you promised to consider. The peace of families is very precious; but it cannot be preserved by, nor is it likely to survive a deliberate wrong. By alarming the Archbishop with groundless fears, (only possible to one ignorant of the law) you have prevented him from paying any portion of my fee. This was a deliberate wrong, and prompted in my opinion by malice and the hope of coercing me. You knew that I needed urgently to enlarge my house this Fall, for the necessary comfort of my family during the winter; you knew that there was a large sum due me, no matter what the dispute between us; you knew that any portion of it might be paid, without prejudice to any rights or claims of yours, and I offered to receive it so; you knew that I was amply responsible for its return if needed and I even offered security; you knew that I had promptly assented to the payment of what you had promised them to the gentlemen in Washington, to whom you had farmed out your share of the labor in the case, and knowing all this you planted yourself in the way to prevent the payment to me of anything whatever, until the portion in dispute between us should be settled at your leisure, some months thereafter. I pointed out to you, good-temperedly, in a letter of Oct. 28th, (I think) that this was the act of an enemy and urged you to reconsider it, you made me no answer, but persevered in the wrong. You have constituted yourself deliberately my enemy; I accept the situation.

"Your reference to the pressure on your time occasioned by "watching night and day many all-important matters," is well enough as an excuse for impoliteness, but the enumeration of the matters in question as "including appropriations, for the orphans and the exemption of church property from taxation," in a correspondence sure to come before the Bishops, should they be arbitrators, was more than uncalled for; it was grossly improper. What would be thought of one, who after being elected to an important office, as Governor, Senator or Judge should accept a large sum of money, as an indemnity against election expenses (or in any of the other forms under which bribery is disguised), from persons whose interests are liable to depend on his official action? What of a Judge who accepts important and valuable services from a litigant before him? You argue to prove the Bishops the proper arbitrators of your case, and in the same paper gratuitously enumerate the services you are rendering to the churches and orphans, whose protectors they are. It seems, then, that you think it well that the arbitrators should know the extent of your sacrifices for them, and their corresponding obligation to you. "Night and day," "day and night," with scarce a moment for rest." Yet I imagine they will feel little complimented, by your opinion of them thus intimated, which puts them if not on the low level of the corrupt public officer supposed, at least on that of the scurvy politician, accessible to the corruption of reciprocal official services.

"I shall not look closely at your reason for declining arbitration by the Bishops. Pride or shame would equally prompt it. You are entitled to a presumption of the better motive. I accept your declension, so that proposition is henceforth and finally eliminated.

"I believe this answers all your letter, and that it will be found intelligible. If any of the opinions it indicates are unjust to you, I am unaware of it. If you find any of its expressions harsh, you must recollect that I entreated you not to introduce such elements as rudeness or injustice into our controversy, and you persisted in doing so. I excuse you in advance from a reply, for to protract such a correspondence is useless. You shall be considered as "denying my facts and conclusions of law" as effectually as if you had taken the usual ten days and pleaded the general issue. The last sentence of your letter, I see, intimates that you look forward to an arbitration after the close of the convention; if so, the initiative is with you."

And there the matter has rested till the present time. The Convention assembled in Sacramento on Saturday, Sept. 28. Having attended its opening session on that day and answered to his name on Monday morning following, Mr. Casserly immediately *returned to San Francisco and remained at home three weeks, attending to his business as usual.* Since that time he has been in San Francisco about three days of each week, and besides attending to current business, has found time as I am informed to undertake the care of legal proceedings originating since the convention assembled. His voice has never, so far as I can learn, been heard in that body beyond the scriptural limit of yea, yea! and nay, nay! so that even if actual occupation in such a body afforded a valid excuse for non-attendance to business affairs in which important rights of third parties are involved,—a proposition which no one but Mr. Casserly would advance,—it is clear that his pretence of being so occupied “day and night, night and day, without a moment for rest,” or indeed in anyway, is a mere sham. The amount of money divisible between us was in round figures say, \$18,000, of this he conceded me entitled to ten, and I him to three thousand, leaving five thousand in dispute. The reasonableness of my proposal that each should be paid what was conceded to be his due, leaving the disputed part for subsequent adjustment, no person desirous simply to do right could deny. His obstructing it was an act of the same character and, doubtless for the same purpose, as his ridiculous claim for a suspension of all business while he attends the convention and—votes.

His evident design to weary me out by “masterly inactivity,” and the unfairness of his proceedings to gain time and cause me inconvenience, have at last determined me to throw off the reserve I have hitherto imposed on myself as to the part he took in the original case, in which he is demanding such large fees. And as a time must come sooner or later, when some tribunal will be called on to pass on the questions at issue between us, I have prepared this paper primarily for its plenary instruction in the facts of the case. I have endeavored to state everything within my recollection, pertinent to the controversy; anything causally omitted which Mr. Casserly deems material, he will supply. If in doing so he can relieve himself from any portion of the censure, to which the above recital of the facts must expose him, I shall sincerely rejoice at it, for I would rather deem him wanting in good manners, than wilfully negligent of duty. If he can demonstrate his legal title to compensation for services never

rendered, I shall not envy him, for though he may take from me a portion of my compensation, he cannot deprive me of the consciousness of having saved the Pious Fund for our clients in despite of his blunders and mistakes. But if he can do neither of these things, and shall find himself humiliated by the proofs of his incapacity and negligence, I hope all will recognize that he drew the disclosure of it on himself.

JOHN T. DOYLE.



